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NETHERLANDS
(EUROPEAN PART OF THE KINGDOM)

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I. LAND AND PEOPLE

1. The Kingdom of the Netherlands comprises the Netherlands in Europe, and the Netherlands Antilles and Aruba in the Caribbean. The Netherlands covers a total area of 41,526 square kilometres.

2. The Netherlands is situated in the lowlands of north-west Europe between 50° 45' and 53° 52' latitude and 3° 21' and 7° 13' longitude. It is flanked to the north and west by the North Sea, to the east by Germany and to the south by Belgium.

3. The Netherlands lies in the temperate zone of the Northern Hemisphere. The proximity of the sea and the warm North Atlantic Gulf Stream ensure a temperate maritime climate. The temperature therefore does not fluctuate greatly in the course of a day or a year. The average temperature, as measured by the Royal Netherlands Meteorological Institute in De Bilt, fluctuates between 2° C in January and 17° C in July.

4. The country is extremely flat, with a few hills in the east and the south. Some 27 per cent of the western and northern regions lies below sea level. The lowest point, 6.7 m below sea level, is in the west, where 60 per cent of the population is concentrated. The highest point, 321 m above sea level, is in the south, at the junction of the Netherlands, Belgium and the German borders.

5. As more than half of the country lies below sea level, and 60 per cent of the population live in these low-lying areas, protective dikes and pumping stations are essential. Natural dunes and artificial dikes protect these areas from inundation by the sea via estuaries and inlets, and prevent flooding from the rivers, groundwater and rainfall. Two major projects have ensured an effective system of water control. The Delta Project, completed in 1986, was initiated after the 1953 disaster when the sea inundated vast areas in the south-west and claimed 1,835 lives. It has closed off the estuaries in the south-west of the country by means of storm-surge barriers. The other project, the construction of a 30 km barrier dam closing off the former Zuider Zee from the sea, was completed in the 1930s. It transformed the Zuider Zee into a freshwater lake, since then known as the IJsselmeer. When the barrier dam was in place, work began on the reclamation of four huge polders which together represent a gain of 165,000 hectares of new land.

6. The Netherlands currently has a population of 15,341,000, of which 7,585,738 are males and 7,755,524 females. The average annual population growth was 0.73 per cent in 1993 and 0.67 per cent in 1994. (table 1)

Table 1: Population figures

Population	1991		1994		2010	
	abs.	%	abs.	%	abs.	%
male	7 419 501	49.4	7 585 738	49.4	8 301 092	49.9
female	7 590 944	50.6	7 755 524	50.6	8 430 937	50.1
Total	15 010 445	100	15 341 262	100	16 732 029	100

Source: The Central Population Register.

7. Most people (62 per cent) are between 19 and 65 years old. In 1994 3,751,154 persons (25 per cent of the population) were younger than 19 and 2,007,994 (13 per cent) persons were older than 65. The birth rate dropped from 18.3 per thousand in 1970 to 13.2 per thousand in 1991. Since 1983 the number of births has nevertheless shown an increase, peaking at 197,000 live births (101,000 boys and 96,000 girls) in 1990. This represents an increase of 5 per cent compared with 1989 and is the sharpest rise in absolute terms since 1969. It is due to the fact that the children born during the baby boom of the 1950s and 1960s are now becoming parents themselves. The fertility rate of the female population has fluctuated around 1.60 since 1980.

8. In 1993 the death rate per thousand inhabitants was 9.0, equal to a total of 137,795 of which 69,884 were men. In 1993 the infant mortality was 6.3 per thousand live births. Maternal mortality is close to zero. The average age at the moment of death was 71.3 for males and 77.7 for females. At the moment of birth the life expectancy is 74 years old for males and 80 years old for females.

9. The national language is Received Standard Dutch. The Frisian language is accorded a special status. It has been a compulsory subject in primary schools in the province of Friesland since 1980. Dialects are also spoken in many regions.

10. About 54 per cent of the inhabitants of the Netherlands are adherents of Christian churches. In 1993 32 per cent were Roman Catholic, 15 per cent were Dutch Reformed and 7 per cent were Calvinist. Muslims comprise 3.7 per cent of the total Dutch population and Hindus 0.5 per cent.

11. Up to the 1960s the Netherlands was a country with negative net migration. This situation has now changed. Since the mid-1980s at least 20,000 more people have entered the country each year than have left it. This figure has risen sharply in recent years: in 1992 and 1993 net migration was little under 60,000. Two non-Dutch minority groups - Turks and Moroccans - account for approximately 1 per cent of the population (see table 2).

Table 2. Moroccan and Turkish immigrants as percentage of total Dutch population

	1985	1990	1994	of which men
Moroccans	0.8	1.0	1.1	55%
Turks	1.1	1.3	1.3	54%

Source: The Central Population Register.

12. Table 3 presents population figures by household:

Table 3. Population by household situation and participation in society

	1989 1/	1991 1/	1992 1/	1992 2/	1993 2/
MEN (18-64 years)	x 1 000				
In private households	1 614	1 545	1 562	1 550	1 557
- in multi-person households with minor children in employment					
in education	105	91	104	109	104
other	234	188	166	173	165
without minor children in employment	1 558	1 701	1 738	1 713	1 759
in education	175	198	202	210	190
other	573	562	529	546	536
- in one-person households in employment	329	391	419	408	432
in education	52	86	98	103	104
other	189	170	159	164	170
- in institutional households	42	43	37	37	37
WOMEN (18-64 years)					
In private households	406	460	676	498	717
- in multi-person households with minor children in employment					
in education	89	84	96	101	96
other	1 523	1 375	1 147	1 319	1 110
without minor children in employment	845	967	1 113	1 005	1 120
in education	130	147	156	164	154
other	1 188	1 197	1 058	1 157	1 070
- in one-person households in employment	241	269	299	281	303
in education	47	81	88	96	84
other	242	223	202	212	204
- in institutional household	26	22	29	29	30

Source: The Central Population Register.

1/ Employed persons: working at least 20 hours a week.

2/ Employed persons: working at least 12 hours a week.

13. The population density is high in the Netherlands. As the total area of the country includes not only land, but also many rivers, canals and lakes, each square kilometre of land has to accommodate an average of 449 people. This makes the Netherlands one of the most densely populated countries in the world. The most densely populated area is the Randstad conurbation in the west of the country, which centres around the cities of Amsterdam, The Hague, Rotterdam and Utrecht.

14. The urbanization of the population can be described in two ways: by categorizing the municipalities on the basis of address density and on the basis of the number of inhabitants. Each of these approaches is illustrated below by means of a table. In table 4 the municipalities are distinguished according to the following five categories:

(a) Very strong urbanization, with an address density of 2,500 addresses or more per km^2;

(b) Strong urbanization, with an address density of 1,500 to 2,500 addresses per km^2;

(c) Moderate urbanization, with an address density of 1,000 to 1,500 addresses per km^2;

(d) Little urbanization, with an address density of 500 to 1,000 addresses per km^2;

(e) No urbanization, with an address density of less then 500 addresses per km^2.

Table 4. Population by age and municipalities by category of urbanization, 1 January 1994

	population						municipalities
	0-19 yrs	20-44 yrs	45-64 yrs	65-79 yrs	80 or older	total	
urbanization	%					x 1 000 abs.	
Very strong	20.6	44.3	20.0	11.1	4.0	2 926.0	13
Strong	23.7	41.2	21.7	10.4	3.0	3 175.1	44
Moderate	25.5	39.3	22.8	9.8	2.7	3 194.7	88
Little	26.1	38.2	23.6	9.4	2.7	3 174.0	186
No	26.3	37.7	23.5	9.7	2.8	2 870.3	305
Total	24.5	40.1	22.3	10.1	3.0	15 340.2	636

Source: The Central Population Register.

Table 5. Population and municipalities by size of municipality, 1 January 1994

	Population						municipalities
	0-19 yrs	20-44 yrs	45-64 yrs	65-79 yrs	80 or older	total	
municipalities with	%					x 1 000 abs.	
< 5 000	25.5	37.3	24.0	10.4	2.9	217.2	64
5 000 < 10 000	26.2	37.9	23.8	9.4	2.7	1 248.2	165
10 000 < 20 000	26.1	38.1	23.7	9.4	2.8	3 093.0	216
20 000 < 50 000	25.6	38.5	23.1	9.9	2.9	4 012.2	135
50 000 < 100 000	24.6	40.8	21.6	10.3	2.8	2 584.3	36
100 000 or more inhabitants	21.5	43.7	20.5	10.7	3.6	4 185.3	20
Total	24.5	40.1	22.3	10.1	3.0	15 340.2	636

Source: The Central Population Register.

15. In 1994 the working population (i.e. people who work more than 12 hours a week) was 6.5 million. Between 1980 and 1991 the gross domestic product increased in real terms by an annual average of 2.1 per cent; in 1992 this was only 1.4 per cent. In 1994 the gross national product was 610,650 million guilders, the equivalent of US$ 335,522 million. Per capita income was 39,700 guilders, the equivalent of US$ 21,813. The budget deficit was 3.5 per cent of GDP in 1991 and 3.7 per cent in 1992. The national debt was 62.5 per cent of GDP in 1991 and 63.6 per cent in 1992.

16. The annual average of registered unemployed was 415,000 in 1993, 6.5 per cent of the total labour force, rising to 480,000 in 1994. The minimum wage was 2,163 guilders (US$ 1,188) per month on 31 December 1994.

17. The Netherlands has an extensive social security system with provisions aiming at maintaining a certain material standard of living. The laws and regulations governing this system are some of the most far-reaching in the world and are regarded as being among the most important achievements of Dutch society. Two basic principles underpin the Dutch social security system. The equivalence principle, in accordance with which the level of benefits is related to the income lost and the social security contributions paid, forms the basis of, for example, the Unemployment Insurance Act. The solidarity principle, in accordance with which the contributions or taxes paid are regarded as irrelevant to the benefits entitlement, is embodied in the National Assistance Act, under which everyone living in the same circumstances receives the same benefits. In 1993, 25 per cent of the Government's current account was devoted to expenditures on social provisions.

18. The Dutch Government has endorsed the Statistical Yearbook of the Netherlands (1995) as an annex. This publication describes the principal

demographic, economic and social indicators of the Netherlands. The Yearbook is updated every year and may be consulted at the United Nations Centre for Human Rights, Geneva.

II. GENERAL POLITICAL STRUCTURE 1/

A. Constitutional history

19. The Kingdom of the Netherlands dates from 1813 when William I accepted the sovereignty. Before the period of French rule (1795-1813) the greater part of what is now the Netherlands had comprised a number of sovereign provinces, which formed a confederation, the Republic of the United Provinces. Originally there were 17 provinces, which also included the territory of present-day Belgium and Luxembourg. Later, under King Philip II of Spain, the seven northern provinces split off and joined together in the Union of Utrecht. There was no strong central authority, however. The Union did not possess a head of State, and the States General were usually seen as a meeting of envoys from the provinces rather than a national parliament. Government, however, was centralized under the French rule and the administrative advantages of this proved so great that in 1814, when the first written Constitution (Grondwet) came into being, it was decided that a unitary State should be established. Although the Constitution recognized provinces and local authorities neither possessed sovereignty. Sovereignty was vested jointly in the central institutions of the State.

20. It is worthy of note that in 1814 the Constitution introduced a monarchy, which had not been the recognized form of government in the country since the formal abjuration of King Philip II in 1581.

21. In addition to the monarchy, the 1814 Constitution established the States General, consisting of a single chamber, which exercised legislative power together with the monarch. However, the King also possessed autonomous regulating powers, which he frequently made use of. There was not yet a government in the modern sense, with ministers accountable to parliament. Although there were ministers, they were only advisers to the King. The Constitution did, however, institute an independent judiciary.

22. The Treaty of Vienna of 1815 united the present-day Netherlands with present-day Belgium. International politics required that there be a sufficiently large and powerful State on the northern border of France. On the instigation of the Belgians, who wished to see the nobility represented in Parliament, the new Constitution introduced a bicameral system, in which the Second Chamber consisted of elected members and the First Chamber of persons appointed by the King for life.

23. The unification of the two countries did not, however, last for long. King William's regime, which displayed certain authoritarian traits, met with opposition, especially among the southern liberals and Catholics. The latter

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1/ Much of the information contained in the following sections is taken from The Kingdom of the Netherlands, an introduction to Dutch Constitutional Law, C.A.J.M. Kortmann and P.P.T. Bovend'Eert, 1993.

objected to the King interfering in religious matters while the liberals, mainly French speaking, resented his Dutch language policy. The Belgians rose in revolt in 1830 and declared independence, and in 1831 a Belgian constitution came into force. The formal separation of Belgium and the Netherlands was, however, only finalized in 1839 by the Treaty of London.

24. A revision of the Dutch Constitution in 1840 then provided the initial impetus for the development of a modern system of government. Ministers were made liable under criminal law for acts contravening the Constitution or the law.

25. However, the most important constitutional reform occurred in 1848, introducing political ministerial accountability and giving the Government the power to dissolve Parliament. It also prescribed that the members of the Second Chamber (or Lower House) should be directly elected (albeit by a limited electorate), and gave the House important powers, such as the right of amendment and the right of interpellation. At the same time the foundation for a modern and uniform system of government for the provinces and local authorities was laid down.

26. These constitutional changes certainly did not mean an end to the role of the monarch. The Lower House was weak and internally divided, partly because there were, as yet, no political parties or parliamentary groupings. The King still had his autonomous regulatory power even though he now shared it with a minister. This arrangement did not last long, however. The years 1866 and 1868 witnessed conflicts between the Government and the Lower House which were finally decided in favour of the latter. The parliamentary system was by now established. Since then a Government or a minister that loses the confidence of the Lower House must resign, unless the House is dissolved.

27. The Supreme Court's Meerenberg ruling of 1879, followed by the 1887 revision of the Constitution, almost completely abolished the autonomous legislative powers of the Government. Since then orders introduced by the Government and enforceable by penalty have had to rest on delegation by an Act of Parliament. Also from 1887 onwards there was a gradual expansion of the franchise to include broader sections of the population.

28. Notwithstanding later constitutional reforms, the reform of 1917 can be regarded as the culmination of the construction of the constitutional system of the Netherlands. It introduced universal suffrage for men and women as well as the system of proportional representation. Furthermore, it put an end to the long-standing political conflict on the financing of denominational education. The political parties on the left voted for denominational education to be subsidized in exchange for recognition of universal suffrage by the religious parties.

29. To summarize, the following principal threads can de detected in the constitutional development of the Netherlands: ongoing broadening of the franchise, increasing power of the States General, consolidation of democracy, reduction of the autonomous powers of the Government, harmonization of the organization and powers of the decentralized authorities, and an emphasis on fundamental rights and legal protection against the actions of government bodies. In spite of these developments and another complete revision of the

Constitution in 1983, little has really changed in the substance of the Constitution since 1848. The most important amendments to constitutional law have resulted from EC law, treaties and supranational and international case law. In addition, parliamentary and political relations have changed and developed independently of formal constitutional changes.

B. Organization of the Kingdom

30. The present constitutional structure of the Kingdom of the Netherlands dates back to 1954, when, after several years of study, discussion and negotiation, the Netherlands, Suriname and the Netherlands Antilles (then including Aruba) decided to establish a new constitutional order. They drew up a document, known as the Charter of the Kingdom (Statuut), in which they agreed to "conduct their internal affairs autonomously and in their common interest on a basis of equality and accord each other reciprocal assistance". Thus the Kingdom, while remaining one sovereign entity under international law, came to consist of three co-equal partners which have distinct identities and are fully autonomous in their internal affairs.

31. Since then, two important changes have taken place. In 1975 Suriname decided, with the full assent of the partners, to leave the Kingdom and become a sovereign State in its own right. In 1986 Aruba became a separate country within the Kingdom, under the Charter, and now has the same constitutional status as the two other countries, the Netherlands and the Netherlands Antilles.

32. The Charter, the highest constitutional instrument of the Kingdom, is a legal document sui generis, which is based upon its voluntary acceptance by the three countries. It falls into three essential parts. The first part defines the association between the three countries, which is federal in nature. The fact that the three countries together form one sovereign entity implies that a number of matters need to be administered jointly, through the institutions of the Kingdom (wherever possible, the organs of each country participate in the conduct of these affairs). These matters are called Kingdom affairs. They are enumerated in the Charter and include the maintenance of independence, defence, foreign relations, the safeguarding of fundamental human rights and freedoms, legal stability and proper administration. The second part deals with the relationship between the countries as autonomous entities. Their partnership implies that the countries respect each other and render one another aid and assistance, materially and otherwise, and that they shall consult and coordinate in matters which are not Kingdom affairs but in which a reasonable degree of coordination is in the interest of the Kingdom as a whole. The third part of the Charter defines the autonomy of the countries, which is the principle underlying the Charter; the countries govern themselves according to their own wishes, subject only to certain conditions imposed by their being part of the Kingdom. Elementary principles of democratic government, observance of the Charter and Kingdom legislation, and the adequate functioning of the organs of the country are matters of concern to the whole of the realm. Conversely, although Kingdom affairs are matters for the Kingdom as a whole, the countries play active roles in the way they are conducted.

33. The seat of Government is in The Hague, but Amsterdam is the capital city of the Netherlands.

C. Form of government

34. Central Government is a constitutional monarchy with a parliamentary system. Since 1814 there has been a hereditary monarchy occupied in turn by Kings William I, William II and William III, followed by the Princess Regent Emma and Queens Wilhelmina, Juliana and Beatrix. The monarch enjoys immunity, while ministers are politically accountable and subject to criminal law. In practice only the political accountability of ministers has any real meaning. Legally speaking the monarch forms part of the Government but it is the ministers who actually make policy.

35. As has already been pointed out, under the parliamentary system a minister who loses the confidence of the Lower or (in theory) the Upper House must resign, unless a Chamber of Parliament is dissolved.

36. The fact that the Netherlands is a constitutional monarchy means that the exercise of all power is subject to limitation, and no single office possesses absolute power.

37. In general, the basic principle of Dutch constitutional law is a strict separation of the legislative, executive and judicial powers of government. In practice, the situation is considerably more subtly differentiated.

D. The legislature

1. The States General

38. The States General are considered as the national representative organs of the people. The States General consists of the Second Chamber, or Lower House (Tweede Kamer) and the First Chamber, or Upper House (Eerste Kamer).

39. Dutch Parliament has relatively few members. Under article 51 of the Constitution the Lower House consists of 150 members and the Upper House of 75. The following observations can be made regarding the election of the members of both Houses (kamerleden).

40. Article 4 of the Constitution guarantees to each Dutch citizen the right to elect the members of the general representative bodies, including the States General, and to stand for election to them. The Constitution and the Elections Act (Kieswet) place a number of restrictions on this. Dutch nationals who have reached the age of 18 and are not disqualified from voting have the right to vote for members of the Lower House. The Netherlands Nationality Act determines who is a Dutch national. In principle a person does not have to be resident in the Netherlands to exercise the right to vote.

41. Article 54 of the Constitution specifies a number of cases in which the right to vote is withheld. Anyone who has committed an offence designated by Act of Parliament and has been sentenced as a result by irrevocable judgement of a court of law to a custodial sentence of one year or more, and has simultaneously been disqualified from voting, shall not be entitled to vote.

The circumstances under which disqualification from voting can take place are limited by the Act of Parliament. In addition, anyone who has been deemed legally incompetent by irrevocable judgement of a court because of a mental disorder is also disqualified.

42. These conditions determine who belongs to the electorate of the Lower House. In principle the same body of people can be elected as members of the Lower or Upper House. The members of the provincial councils make up the electorate of the Upper House. Requirements which must be met by these members are laid down in article 129 of the Constitution. They must be Dutch, resident in the province and also fulfil the requirements which must be met for persons to be elected to the Lower House.

43. In principle elections to both Houses take place every four years. The Constitution lays down that the length of a parliamentary session is four years in the case of both Houses. Elections can also take place at other times if one or both Houses are dissolved. In both types of elections all seats in the House are up for re-election.

44. The arrival of universal suffrage through the constitutional reform of 1917 was accompanied by a fundamental change in the electoral system. Before 1917 an absolute majority system, organized on a district basis, operated in the Netherlands. This electoral system promoted cooperation between political parties at election time. Two major political blocs, consisting of coalitions of like-minded parties, struggled to win a parliamentary majority. The outcome of the election determined the political composition of the Cabinet.

45. Since 1917 a system of proportional representation has been in operation, whereby the country is treated as a single constituency. Under this system a candidate is elected if he wins 1/150 (Lower House) or 1/75 (Upper House) of the number of the valid votes.

46. The establishment of the election result is a very arithmetical business. All the votes on the lists are compiled by the central voting office, which then establishes the quota. This amounts to the number of votes cast divided by the number of seats (150). Each list which achieves the quota one or more times over gets a corresponding number of seats. The remaining seats are shared according to the D'Hondt system (based on the largest averages) which favours the large parties. The Elections Act also permits combined lists to be drawn up at nomination time, which can be advantageous when the remaining seats are being shared. Finally, the seats allocated to each list have to be shared out among the candidates on those lists. The available seats are first allocated to those candidates who won more than half of the quota. The order of priority among them is determined by the number of votes they received. If there are still some seats left over to be allocated, this is done in the order of appearance on the list of candidates.

47. Election of the members of the Upper House also takes place according to a system of proportional representation. Except in cases where the House has been dissolved, elections take place three months after the election of the members of the provincial councils. Thus the provincial elections have an almost immediate effect upon the composition of the Upper House.

48. The concepts of autonomy and independence are central to the constitutional provisions for the legal status of the States General. Alongside this, constitutional law also contains certain checks and balances.

49. Nowadays, the States General are considered to be permanently in session. Before the constitutional reform of 1983 the situation was different under the law. Under the Constitution, the monarch opened and closed both the normal, yearly sessions and extraordinary sessions. However, this did not curtail Parliament's autonomy in practice. In effect, even before 1983, Parliament was permanently in session.

50. Membership of one of the Houses cannot be combined with certain other functions. This is referred to as incompatibility. Under article 57, paragraph 1, of the Constitution no one may be a member of both Houses at the same time, a necessary prerequisite of the bicameral system. Paragraph 2 of article 57 then lists a number of offices which a person may not hold while being a member of Parliament. These include the posts of minister, State secretary, member of the Supreme Court and Advocate-General at the highest court in the country. In general, these incompatibilities may be deemed to be founded on the principle of separation of powers.

51. The incompatibility between being a member of Parliament and being a minister or State secretary deserves special consideration. It is representative of the relationship between the Government and the States General. Dutch constitutional law considers the Government and Parliament as two separate and distinct governing institutions. In practice this is referred to as a "dualistic" relationship.

52. Ministers and State secretaries are not appointed by Parliament and do not have to come from its midst.

53. Broadly speaking the Houses of the States General have two main powers: a shared role in the legislative process, and supervision of the way the Government exercises its powers.

54. Under article 81 of the Constitution the power to pass Acts of Parliament (wetten) is assigned to the Government and the States General jointly. Neither the Constitution itself, nor any other constitutional law, determine what the content of an Act of Parliament must or may be. In principle the legislature is free to draft any Act it wishes. But one must not consider it as sovereign. There are limits to what an Act may contain. Thus chapter 8 of the Constitution lays down a special procedure for revising the Constitution. In addition the legislature may not include anything in an Act which conflicts with fundamental rights or other constitutional provisions.

55. Constitutional law not only specifies what laws the legislature may not make, it also prescribes those which it must make. The Constitution and the Charter refer to the role of the national legislature in setting standards. This is true, for example, in the case of many fundamental rights, provisions relating to the organization and powers of central government offices, and in the case of financial provisions (budget, taxes and the money system).

2. Legislative procedure

56. Bills are prepared by civil servants in a particular ministry, possibly in cooperation with other ministries. During the preparatory stages consultations are usually held with the representatives of social groups and with experts. Advice is also frequently sought from one or more advisory bodies of which there are many in the Netherlands. There are extensive, official instructions for the drafting of bills which are specified by the Prime Minister. These aim to safeguard consistency of legislation and to reduce the enormous flood of regulations. Once the bill, together with its explanatory notes, has been prepared, and approved by the Cabinet it is sent to the Council of State for its advice. The minister concerned responds to this advice in a written report and, if necessary, introduces changes to the bill. It is then ready to be put before the Lower House. The advice of the Council of State, the minister's report and the reports from any other consultations are submitted at the same time.

57. Next, the President of the Lower House places the bill in the hands of a permanent or special committee. The committee's investigations are usually conducted in writing, in contrast with the procedure in many other countries. The committee produces either an interim or a final report, which consists of the written comments of the various parliamentary parties represented on the committee on the proposed bill. The Government responds to an interim report with a memorandum of reply, or to a (final) report with a note to the Lower House. The Government may introduce changes to the bill at this stage.

58. After these investigations have been completed, which sometimes takes years, the plenary discussion of the bill begins. The bill is proposed in the Lower House by one or more ministers or State secretaries. The debate in principle passes through two phases. In the first phase the general content of the bill is debated, and the second phase deals with the separate sections. The second phase is important in connection with the Lower House's power to make amendments. The Government can also introduce changes to the bill during the plenary debate.

59. The procedure in the Upper House is rather different, because it has no power to amend bills; it can only accept or reject them. Also, once a bill has passed to the Upper House, the Government is no longer able to introduce changes. What the Government can do, on the instigation of the Upper House or on its own initiative, is to decide to submit an amending Act (novelle) to the Lower House. This can be regarded as a bill to change a bill which is pending before the Upper House. The committee stage of investigations proceeds in the same way as in the Lower House. After the committee stage, a plenary debate takes place and a vote is held on the complete bill. The Government may still withdraw the bill before the vote. It is able to do this at any stage from the moment that the bill is first put before the Lower House.

60. Once the Upper House has accepted a bill - as it almost invariably does - it still has to be ratified by the Government. This means that it has to be signed by the monarch and countersigned by one or more ministers or State secretaries (art. 87 of the Constitution). Once ratified, it becomes an Act of Parliament. This does not mean that the Act comes into force, however. Under article 88 of the Constitution, an Act cannot enter into operation

before it has been published. Section 3 of the Publication Act implementing on article 88 of the Constitution, requires that Acts of Parliament be published in the Bulletin of Acts and Decrees (Staatsblad). The minister of justice is responsible for their publication.

3. Parliamentary control

61. In addition to their shared legislative powers, the States General have an important role in exercising control. The most important element of this, from the point of view of positive law, is ministerial responsibility, which is governed by articles 42 and 68 of the Constitution. Under these provisions ministers and State secretaries are obliged to supply any information which may be requested by one or more members of Parliament, provided that supplying such information does not harm the interests of the State. Information may be supplied in a number of ways. Obvious examples are through interpellation and the right to put questions to ministers.

62. However, this is by no means the only way in which Parliament exercises control over the Government. In the first place both Houses have the right of inquiry. In principle, they may conduct inquiries into abuses or any other matters about which they consider that they need information.

63. A regular form of control takes place in committee meetings, where members of Parliament may put questions to a minister or State secretary. There are also informal contacts between members of the Government and members of the States General. It goes without saying that ministers and State secretaries regularly consult the leaders of the parties in Government and, if necessary, other members of those parties as well as the opposition parties.

64. A special form of control is exercised in respect of matters which may not be decided without the prior consent of the legislature or the Houses of the States General. Hence approval must be attained from the States General in order to conclude treaties or declare war. In other cases the States General are empowered to revote a government order. In principle, this is the case if the Government has declared a state of emergency. The States General are empowered to decide whether it should continue or not.

65. In addition to their shared legislative and controlling functions mentioned, there are a number of specific tasks which one or both Houses fulfil. For example, the Lower House appoints the national Ombudsman, members of the Supreme Court and the General Court of Audit. Both Houses also have a petitions committee which handles incoming petitions.

4. Budget

66. The national budget is implemented by Act of Parliament. Each ministry has its own budget, which underlines the responsibility of the individual minister. The budgets cover one calendar year. The draft budgets are submitted to the Lower House on the third Tuesday in September, the day of the speech from the throne. The Netherlands does not have a rule that the budget must balance. The draft budget is dealt with in much the same way as any

other bill, which means that the Lower House has the right to amend it. The Upper House may only accept or reject it. The draft budget is seldom rejected by either House.

E. The executive

67. Before the revision of 1983, the Constitution assigned executive power to the monarch. The introduction in 1840 of the requirement that all Acts of Parliament must be countersigned by a member of the Government means that since that date the term "King" in this context must be taken to refer to the "King" in terms of the Constitution, i.e. the Government. Since 1983 there has been no explicit provision in the Constitution relating to the executive power of the Government. Article 42, paragraph 1, of the Constitution merely states that the Government is made up of the monarch and the ministers. Constitutional history shows, however, that this provision indicates not only the composition of the Government but also its function. Hence it is still the Government that wields executive power.

68. Since the revision of 1983 the Constitution has included a separate provision on the Cabinet. Article 45 now provides that the ministers together comprise Cabinet, chaired by the Prime Minister, and specifies that its role is to consider and decide upon overall government policy and promote coherence of that policy.

69. Despite his limited powers, the position of the Prime Minister has become increasingly important in recent years. He is seen as the political leader of the Cabinet, and is presented as such in the media. The fact that the Prime Minister is usually the leader of the largest party in Government has contributed to this development. As a rule he is the person appointed by the monarch to act as a formateur in forming the Government. His role as coordinator has increased considerably. He is often the spokesman for the Cabinet, for example at the annual general debates in Parliament and at the weekly press conferences following cabinet meetings. However, the Prime Minister has no statutory hierarchical position in Parliament with respect to ministerial accountability, the no-confidence rule or the dissolution of Parliament. Under the Constitution powers and responsibilities are shared among the ministers and are exercised through the Cabinet.

1. Forming a Government

70. The process of forming a Government is instituted when the ministers of the outgoing Government submit their resignations. The Constitution does not state when that must happen. There is no fixed term of office for a minister.

71. Two general conditions need to be taken into consideration when a new Government is being formed. Firstly, account must be taken of the balance between political parties in Parliament. Because of the no-confidence rule the Government must be able to count on the support, or at least the acceptance, of a majority in the Lower House. Secondly, there must be a measure of agreement among ministers.

72. The process of forming a Government is set in motion when the outgoing Government resigns. The Sovereign considers their resignation and asks the

ministers to continue to implement all Government policy which they consider necessary in the interests of the Kingdom. The outgoing ministers usually confine themselves to concluding matters already in hand, although this is not necessarily the case. The longer the outgoing Government remains in office, the more likely it is to be in a position to effect even radical policy changes. In the meantime the monarch, as head of State, takes the initiative in forming a new Government. First he consults the Vice-President of the Council of State, the speakers of both Houses of Parliament, and the leaders of all the political parties represented in the Lower House. Their verbal recommendations given at the palace are followed by written reports. The reports submitted by the leaders of the political parties are published. They usually include the parties' preferences regarding the formation of a government coalition and a proposal as to who might be appointed as formateur or informateur.

73. On the basis of these recommendations the monarch appoints an informateur or a formateur with a specific task. There are similarities as well as differences between the constitutional positions of the informateur and the formateur. Both are advisers to the monarch. They preside over the day-to-day work involved in the process of forming a Government, which is concluded when they present a final report to the monarch for publication. The informateur investigates the possibilities of forming a Government. He accepts his assignment immediately. The formateur's brief is to form a Government, which he does only when he is certain that it is possible to draw up a list of nominations for ministers.

74. The assignment may be highly specific or it may be left very open. The first assignment is usually given to a representative of the largest party represented in Parliament. In practice there is no clear distinction between the roles of the informateur and the formateur. Over the years informateurs have gradually been given an increasing share of work involved in forming a Government. At present, the formateur, who is often the envisaged Prime Minister, plays a role only after agreement has been reached on most issues. It is then his task to complete the formation.

75. In principle the formateur or informateur must take account of the wishes of the parties represented in Parliament which are considered likely participants in the new Government. The way he approaches his task depends largely on whether and if so, to what extent the leaders of the parties in Parliament and the parties themselves are to be involved in forming a Government. The main aim is to form a Government which can count on the firm support and cooperation of a majority in the Lower House, or at least one which will not be immediately rejected by the parliamentary majority. It is conceivable that a few general talks with the party leaders will suffice to ensure minimum level of support for the new Government. Government formed in this way is known as an extra-parliamentary Government. Alternatively, the formateur or informateur may need to enter into extensive negotiations with the political parties in order to form a Government. Government formed in this manner is known as a parliamentary Government.

2. Coalition agreement

76. The drafting of a coalition agreement plays an important part in the discussions regarding the formation of a parliamentary Government. It is an agreement between the parties to be represented in the new coalition to accept a basic policy programme for the coming term of government. The parties undertake to refrain from supporting a motion of no confidence in the new Government, and to act in accordance with the policy programme during the Government's term of office. While the coalition agreement is of limited significance in constitutional terms, its political importance has increased considerably in recent decades.

77. After the coalition agreement has been concluded, negotiations usually centre on the composition of the Government. Here too, the political parties are almost invariably involved. Agreement has to be reached on the appointment of ministers and State secretaries and on the distribution of posts following these negotiations. The formateur may offer the posts to the proposed candidates. Finally a constituent assembly of the formateur and the prospective ministers convene to endorse the coalition agreement and decide whether they will be able to pursue a joint policy. In effect, the composition of the Cabinet is decided in the constituent assembly.

78. At the end of this meeting the formateur accepts his assignment and presents a final report to the monarch, containing a proposal on the appointment of new ministers. Finally, the resignation of the outgoing ministers and State secretaries is accepted and the new Government is appointed. The new Prime Minister countersigns the relevant Royal Decrees. The swearing-in ceremony is then held in the presence of the monarch. A few weeks later the new Government presents its policy statement in the Lower House, outlining the policy it intends to pursue.

3. Competence

79. It is difficult to define the powers of the Government. A reading of the Constitution can easily lead to misunderstanding because it contains few provisions explicitly granting power to the Government. In some parts these powers are couched in rather misleading terminology: a Royal Decree, for instance, is an order given by the Government, i.e. the monarch and one or more ministers.

80. The question of whether the legislature is competent to delegate regulatory powers to other bodies, such as the Government or a minister, is in principle laid down in the Constitution. Provisions assigning competence to the legislature or instructing it to regulate certain matters are formulated in unambiguous terms. The verb "to regulate", the noun "rule", and the phrase "by or pursuant to an Act of Parliament" are used to authorize the legislature to delegate or leave further regulation to another body. In all other cases the legislature must handle the matter itself, although the regulation of details may be left to others, in which case it is not a matter of delegation but of execution.

F. The judiciary

81. Chapter 6 of the Constitution is based on the principle that there is a single type of judicial office - the judiciary (rechterlijke macht) - which is competent to decide on all kinds of disputes and to impose penalties. Apart from the national system, reference must also be made to the EC Treaty under which the European Court of Justice exercises binding jurisdiction over the Netherlands, and to the European Court of Human Rights whose jurisdiction has been recognized by the Netherlands.

82. Up to the present, membership of the judiciary as intended in the Constitution has been regulated by the Judiciary (Organization) Act (Wet op de rechterlijke organisatie). According to section 1 of this Act the judiciary comprises: the Supreme Court (Hoge Raad) which is also named in the Constitution, the courts of appeal (gerechtshoven), the regional courts (arrondissementsrechtbanken) and the district courts (kantongerechten). Due to the wording of the Constitution on the judiciary the public prosecutions department (openbaar ministerie) may be seen as part of the judiciary. However, it does not exercise jurisdiction but belongs to the executive and is responsible for investigating and prosecuting criminal offences (see para. 94 ff).

83. Members of the Supreme Court, like the members of other institutions which form part of the judiciary, are appointed for life by Royal Decree, i.e. until they reach the age of 70. Appointments are made on the basis of a list of three persons nominated by the Lower House of the States General. The Government may choose from these nominees. The involvement of the Lower House can be explained by the fact that the Supreme Court passes judgement when ministers, among others, have committed an offence while in office. In practice the Lower House places on its list the three candidates most highly recommended by the Supreme Court.

84. The Supreme Court comprises several divisions. The majority of judgements are passed by five members. The Netherlands has five appeal courts, which also have divisions. In principle judgement is passed by three members. The 19 regional courts also have separate divisions. Some judgements in the regional courts are given by a single judge, others by three judges. There are 64 district courts which, with a single exception, do not have divisions. Judgement is almost always passed by a single judge in the district courts.

85. Members of the judiciary are appointed for life by Royal Decree. Life tenure has been defined in an Act of Parliament as meaning up to the age of 70. A judge can only be dismissed by his colleagues in the judiciary, and then only in circumstances laid down in an Act of Parliament. The legal status of the judiciary is also regulated by Act of Parliament. These rules aim to guarantee the independence of the judiciary. For that matter Dutch constitutional law does not establish the functional independence of the judiciary in so many words, but it stems directly from article 6 of the European Convention on Human Rights.

1. Competence

86. The Constitution has little to say on the competence of the judiciary. This is largely determined by Acts of Parliament and in jurisprudence. Article 112, paragraph 1, of the Constitution states that the judgement of disputes involving civil rights and obligations shall be the responsibility of the judiciary. In principle this covers all disputes between individuals, between the Government and individuals and between different government bodies. Paragraph 2 of the same article states that responsibility for the judgement of disputes which do not arise from matters of civil law (burgerlijke rechtsbetrekkingen) may be granted by Act of Parliament either to the judiciary or to courts which do not form part of the judiciary. This constitutional provision does not define the competence of the judiciary precisely, since it may be extended or limited by the legislature.

87. In addition to article 112, paragraph 1, the legislature must take into account a number of other provisions concerning the powers of the judiciary. Article 113, paragraph 1 of the Constitution assigns responsibility for judging criminal cases to the judiciary, and paragraph 3 of that article states that custodial sentences may only be imposed by the judiciary. Finally, cassation and the judgement of certain types of misfeasance are the responsibility of the Supreme Court.

88. Disputes between individuals and the Government concerning the exercise of government duties (administrative law) may also be brought before an independent court. First, however, a complaint must be lodged with the government body concerned, which may review the disputed decision (see para. 131 ff).

89. The Constitution not only grants powers to the judiciary, but also lays down in general terms how it must exercise these powers. For instance, trials must be held in public and judgements must specify the grounds on which they are based, except where an Act of Parliament provides otherwise. There are also statutory regulations on the matter. One characteristic feature of Dutch law is that no form of jurisdiction recognizes a system of dissenting or concurring opinions. The courts act as a united body and may not communicate a minority opinion to the outside.

90. All courts are competent to review lower statutory regulations in relation to higher ones and to declare the former incompatible with the latter. In addition they are required to review all national rules in relation to the standards of EC law, which by virtue of its supranational status forms part of the national system of law. In addition, article 94 of the Constitution provides that judges and other officials shall not enforce national laws if doing so would involve contravening directly applicable treaty provisions or decisions of international organizations.

91. There is one notable exception to this system requiring the courts to allow higher legislation to prevail. Under article 120 of the Constitution, the courts are not involved in deciding on the constitutionality of Acts of Parliament. The aim of this provision, which dates back to 1848, is to ensure that responsibility for the interpretation of the Constitution rests with the legislature. Even if the courts do consider an Act to be in conflict with the

Constitution, they are not authorized to declare it not binding or not to be enforced. In a controversial Supreme Court decision of 14 April 1989, NJ 469, this prohibition against judicial review was explained in broad terms. The Supreme Court interpreted this article to mean that not only could the validity of legislation not be tested against the Constitution, it could not be tested against the Charter for the Kingdom of the Netherlands or against general legal principles either.

2. Procedural law in the Netherlands

(a) Criminal law

92. Main features of the criminal procedure. The Code of Criminal Procedure regulates detection, investigation and prosecution of criminal offences, trial in criminal cases, the application of penalties and the enforcement of sanctions.

93. Different authorities are charged with investigation (the police), prosecution (the public prosecutions department), sentencing (the judiciary), and execution of criminal sanctions (the prison system).

94. The Public Prosecutions Department in the Netherlands is organized hierarchically under the authority of the Minister of Justice. It is organized along the same geographical lines as the courts (first instance: local; second instance: regional; Supreme Court: national).

95. The public prosecutors are State officials belonging to the judiciary. They are in a somewhat dualistic position. On the one hand they are hierarchically organized officials under the ultimate authority of the Minister of Justice; on the other hand they belong to the judiciary. As a result, the Public Prosecutions Department enjoys a considerable degree of independence from the Ministry of Justice.

96. Only a public prosecutor has the power to bring a case before the court. Neither the police nor ordinary individuals have the power to do so. However, individuals may lodge a complaint with the regional court about failure to prosecute a case. If the complaint is considered to be founded, the court orders the public prosecutor to prosecute the case.

97. In accordance with that power the public prosecutor is the formal head of investigations by the police. This does not mean that a public prosecutor is personally involved in every police investigation. In practice he deals with complicated or sensitive cases. The main task is to set priorities in criminal investigations in general. Police investigations often require the use of force or pressure. In such cases permission must first be obtained from the public prosecutor.

98. The public prosecutor plays a different role in the enforcement of sentences. When an offender has been sentenced and has exhausted all legal remedies, the public prosecutor is obliged to enforce the sentence. He issues an order on the basis of which the offender will serve his term in prison. The actual enforcement of a prison sentence is carried out by the Government prison service.

99. Pursuant to articles 167 and 242 of the Code of Criminal Procedure, the public prosecutor must decide after the preliminary investigation whether or not a case should be brought before the courts. The investigation of a case does not automatically culminate in a court hearing. The public prosecutor has to answer two questions when deciding whether to prosecute or not:

1. Are the investigation findings likely to result in a conviction? and, if so,

2. Is a trial in court, followed by a conviction, desirable considering all relevant interests?

100. The following, for instance, would be reason for not continuing the prosecution of a case:

(a) Prosecution could harm the interests of the victim (publicity concerning sexual offences);

(b) The offence was committed so long ago that prosecution would be disproportional (a petty theft five years previously);

(c) The offence is serious in the abstract but is not in fact (theft of a paperclip);

(d) The offender himself is the principal victim (negligence as a result of which the offender is injured and his relatives are killed);

(e) Harm to the national interest (confidential information likely to be divulged in the course of the trial).

101. The general rule is that cases can be tried in three instances. The courts consist of divisions of one (local/regional), three (local/regional/ Supreme Court) or five (Supreme Court) judges. Laymen do not take part in the judiciary: there is no jury system and every judge must hold a degree in law.

102. The public prosecutor institutes court proceedings by issuing a summons/subpoena which includes the indictment. The indictment is the basis for the trial in court and the court's task is limited to considering the facts set out in the indictment. The court is not allowed to impose a penalty for an offence other than the one described in the indictment. The possibilities of changing the indictment during the procedure are limited: changes can only be allowed if the nature of the accusation remains the same. The indictment therefore has to contain an accurate description of the actions which the public prosecutor considers a criminal offence. That description has to cover all aspects of the offence as it is described in the relevant legislation. If the description is too vague, the indictment will be null and void; the procedure may be started anew, because the indictment does not provide a proper basis for a full trial. If the court is not satisfied that the action or actions described in the indictment have been proven the suspect is acquitted.

103. The charge against the defendant has to be substantiated by the public prosecutor too. According to article 338 of the Code of Criminal Procedure the criterion by which the court may deem the accusation proven is that it must be satisfied that the facts as stated in the indictment are true. The conviction must be based on evidence submitted by the public prosecutor. According to the legal definition, only evidence which is specified by law is admissible, while any evidence that has been obtained unlawfully may be declared inadmissible.

104. The forms of evidence specified in the law are the following:

(a) The facts as perceived in court by the judge himself;

(b) Statements made by the defendant;

(c) (Sworn) testimony of a witness;

(d) (Sworn) statements of an expert;

(e) Information in writing (e.g. official reports by the police).

105. The evaluation of evidence is to a large extent left to the discretion of the judge. There are only a few specific rules in this respect:

(a) Evidence in support of an indictment may not be based only on the confession of the defendant or on the testimony of a single witness. This applies to the indictment as a whole: parts of the indictment may be accepted as true on the basis of one of these forms of evidence;

(b) Testimony given by a witness may only be taken into account in so far as it concerns the witness himself as perceived, i.e. seen, felt or heard. Hearsay evidence is therefore excluded for any purpose other than to confirm that it was heard by the witness; the truth of what was heard cannot be based on such a statement;

(c) The facts set out in an indictment may be deemed established on the basis of a sworn police report.

This last rule is very important in practice because according to long-standing Supreme Court jurisprudence the exclusion of hearsay evidence does not apply to official police reports. In other words, a police report may contain the statement of a witness and be taken as complete proof of the indictment. As a result the hearing of witnesses in court is the exception rather than the rule. Witnesses are heard if the case is not clear to the court or if the testimony reported by the police is disputed.

106. As a rule, the testimony of an anonymous witness cannot be accepted; it is, however, acceptable as evidence in serious criminal cases if the witness is in danger and has given testimony in a special procedure before an investigating magistrate. The defendant must have an opportunity to put questions to the witness, although it is not essential that the examination take place in a public hearing. The investigating magistrate has to verify

the identity and credibility of the witness. The defendant has the right to examine an anonymous witness. A witness who has given testimony in this special procedure may be excused from attending the trial.

107. The Code of Criminal Procedure provides that a defendant who does not understand Dutch must be assisted by an interpreter in the court hearing. The same article also provides that the defendant shall have access to the assistance of a professional lawyer of his choosing. If the defendant cannot afford legal assistance, counsel will be provided and paid for by the State in more serious cases, if the defendant is being held in pre-trial detention or if he is accused of an indictable offence (as opposed to a summary offence).

(b) Law enforcement instruments

108. Minor offences. Law enforcement in criminal cases may take various forms other than the classical one (prosecution and criminal conviction). Administrative sanctions may be imposed for recurrent offences, since they are just as useful, easier to apply in practice and less expensive for Government authorities. In the process of reviewing or drafting legislation, alternatives to criminal sanctions and the possibilities of decriminalization are always considered. Successful action against minor offences depends less on repressive penal sanctions than on prevention, which can be achieved at reasonable cost. This implies efforts to change the factors that encourage such offences and to promote social control. Recurrent offences should be tackled by an overall policy that aims at fostering a respect for law. Furthermore, measures must be taken to prevent offences from being committed unnoticed or too easily.

109. The same stress should be placed on prevention and individual responsibility with respect to administrative regulations. Many fields of social and economic life are governed by a wide range of regulations. Contravention of such regulations is often an offence. Yet in the public mind many of these contraventions are seen not as real offences or crimes, but as a more or less normal way of doing business. If the public is to be encouraged to observe the law, they must be properly informed in the first place. Furthermore, an effective and efficient monitoring system is needed in order to detect irregularities, whether intentional or not. The Government believe that it makes sense to punish offenders by means of a criminal conviction only as a last resort.

110. Serious crimes. Serious crimes demand a different approach. In this area the criminal justice system is responsible in the first place. These offences are generally condemned, prevention has proved to be very difficult and the public generally believes that they should be punished. This is primarily the task of the police and the public prosecutor, who can exercise the powers needed. Criminal law enforcement is explicitly repressive in this respect. First and foremost, organized crime must be repressed and criminal organizations must be prevented as far as possible from gaining a strong position in society. Criminals should not have a chance to infiltrate businesses operating lawfully. Offenders must be prosecuted and heavily penalized in order to make the Netherlands unattractive to criminals from abroad. Recent legislation gives the authorities wide-ranging powers to confiscate the proceeds of crime.

111. Sanctions differ for various kinds of offences. Serious crimes always have to be prosecuted in court and penalties are imposed. Other offences may be dealt with by the public prosecutor, or even the police, without a court procedure. In such cases, the public prosecutor may decide not to institute proceedings if the offender agrees to satisfy certain conditions. The conditions are not negotiable: the offender has to "take it or leave it". If he does not agree, he will be prosecuted and the court will examine the case. This option applies only to misdemeanours (e.g., contraventions of the Road Traffic Act) and offences punishable by no more than six years' imprisonment (e.g. drunken driving, petty theft, shoplifting, minor forms of aggression, relatively simple forms of fraud, etc.).

112. Criminal sanctions. The courts have wide discretionary powers. In applying criminal sanctions the Dutch Criminal Code, unlike many others, does not specify a minimum penalty for each and every offence. However, there is a general minimum (a fine of 5 guilders, or 1 day imprisonment) for all offences; the maximum penalty is indeed specified for each individual offence.

113. The Code distinguishes between penalties and measures. Penalties are meant to exact retribution and prevent recurrence. Measures can be imposed to restore the legitimate status quo as far as possible or to compel the offender to undergo psychiatric treatment in order to protect society. They usually take the form of court orders.

114. The most common penalties are:

(a) Imprisonment (min. 1 day, max. 20 years);

(b) Community service (max. 240 working hours) as a substitute for imprisonment of 6 months maximum;

(c) Fine (6 categories: f. 500; f. 5,000; f. 10,000; f. 25,000; f. 100,000 and f. 1,000,000);

(d) Confiscation of objects relating to the offence;

(e) Deprivation of certain rights (e.g. the right to vote or to be elected).

115. Orders may be given to effect the following:

(a) Confiscation of objects the possession of which is illegal or contrary to public order;

(b) Repayment of the proceeds of the offence (the amount is unlimited, depending only on the benefit actually received by the offender; if the obligation is not met, the offender may have to serve up to six years' imprisonment);

(c) The payment of damages to the victim;

(d) Placement in a psychiatric hospital (this presupposes a mental illness as a result of which the offender cannot be held completely

responsible for his crime, that the crime is sufficiently serious and that the offender is a danger to himself, to other persons or to property).

As a general rule penalties and measures may be imposed in combination.

(b) Civil procedural law

116. Sources. Dutch civil procedural law is for the most part regulated by the Code of Civil Procedure (Wetboek van Burgerlijke Rechtsvordering - 1838), the Judiciary (Organization) Act (Wet op de rechterlijke organisatie - 1872), the Bankruptcy Act (Faillissementswet - 1893), the Counsel Act (Advocatenwet - 1952), the Legal Aid Act (Wet op de rechtsbijstand - 1994) and certain other Acts. A number of international conventions also regulate certain aspects of Dutch civil procedural law, the most important of which is the EC Convention on Jurisdiction and Enforcement of Judgements in Civil and Commercial Matters. Individuals may invoke the provisions of a convention during proceedings if such provisions are binding on all persons and directly applicable.

117. Main principles. The main principles on which Dutch civil procedural law is based are as follows:

(a) Proceedings are held in public: nevertheless, certain cases where the privacy of the parties is at issue, such as family law proceedings, are not heard in public, nor are certain procedural matters, such as witness hearings, dealt with in open court. However, judgements are always pronounced in public;

(b) The court adopts a passive role: the parties determine the content and extent of proceedings and the court is bound to follow them in this. The presiding judge is empowered to lead proceedings and must, where necessary, apply additional legal rules ex officio;

(c) The parties must be heard: in order to ensure equality of arms, both parties must be afforded the opportunity to put forward their point of view either orally or in writing;

(d) There must in principle be two courts hearing the facts of the case: the court of first instance gives judgement on the facts of the case and the law. On appeal, the facts may be re-examined and the decision on points of law reached by the lower court reviewed. Any errors which may have been made can be corrected in this way;

(e) There must be a possibility of appeal in cassation: with a view to preserving the uniformity of the administration of justice, the Supreme Court, as court of final instance, may evaluate the legal opinions of the lower courts;

(f) Parties must have legal representation: with a view to efficient and speedy proceedings, parties in proceedings before the district courts, the appeal courts and the Supreme Court must be represented by counsel. This is not the case in proceedings before the sub-district courts;

(g) Parties bear the costs: in principle the parties bear the costs of an action. If one of the parties loses the action, he or she may be ordered to pay the costs of the other party. The less well-off may be able to obtain State-funded legal aid, although this is not an obstacle to the court's making an order for the payment of costs;

(h) The grounds on which the decision was taken must be stated: in the interests of the proper administration of justice, the grounds on which a decision is taken must be stated in full.

118. Legal representation. Before courts for which legal assistance is compulsory this is provided by advocates (advocaten). Formal procedural matters, such as the submission of documents, must be done by solicitors (procureurs) who are competent to act at the court in question. Parties appearing before the sub-district courts are entitled to conduct their own case, although they may also appoint a representative for this purpose.

119. Proceedings at first instance. The rules of absolute competence determine which court is entitled to take cognizance of a particular dispute. The sub-district courts are competent to hear claims up to f. 5,000 and litigation relating to contracts of employment, rents, sales agreements and agricultural tenancies, whatever the amount involved. All other disputes are heard before the district courts. The rules of relative competence determine in which court district proceedings should take place. The general rule is that the district court within whose area of jurisdiction the defendant lives is competent.

120. Proceedings are initiated by a writ of summons, in which the plaintiff summons the defendant through the bailiff to appear before the court on a particular date, which he is obliged to do. If he fails to appear, judgement is given by default granting the plaintiff's claim unless the court has found it unlawful or unfounded. If the defendant appears, then proceedings continue as a defended action.

121. In principle each party is given the opportunity to set out their case twice. On the first day of the sitting, or on a date to be determined later, the plaintiff submits his statement of claim, following which the defendant makes his statement of defence, although he may also waive this opportunity and submit to the opinion of the court. When submitting his statement of defence the defendant may also submit a counter-claim, in which case an exchange of statements similar to that which followed the first claim takes place. After hearing the statement of defence the court decides whether it would be appropriate to order the appearance of the parties in order to obtain further information or to test the waters regarding a settlement. The plaintiff may then submit a reply to the defence to which the defendant may submit a rejoinder. Once all statements have been filed, oral pleadings may follow during which the parties' counsel once again set out their clients' case. The court may also ask for further evidence to be submitted. Once this has been done, the court gives judgement.

122. In addition to proceedings initiated by a writ of summons, it is also possible in certain cases laid down by law to start proceedings by petition. In principle these are cases in which the legal consequences cannot be

regulated by the parties themselves and consist mostly of family law litigation. Such proceedings are faster and less formal, and comprise four stages, i.e. petition, defence, oral hearings and judgement.

123. Legal remedies. The most important ordinary legal remedies are: objection, appeal and appeal in cassation. They all have suspensive effect, which means that where the execution of a judgement has already begun, it must be halted unless the judgement was declared immediately enforceable.

124. The lodging of an objection gives a defendant against whom judgement has been given by default the opportunity of a defended action at first instance, despite the fact that he did not appear at the initial hearing. Objection procedures constitute a prolongation of the hearing of the case - this time defended - before the same court that gave the judgement by default. After judgement has been given the parties may still lodge appeal proceedings and appeal in cassation.

125. Appeal proceedings must be lodged within three months of the date of a judgement in a defended action. The second court hearing the facts examines the case afresh and may correct any errors made at first instance. Generally speaking, the district courts hear appeals against judgements handed down by the sub-district courts and the appeal court those of the district court. In certain cases, notably those involving financial matters where the amount in question is less than f. 2,500, no appeal is possible.

126. Appeals in cassation may be lodged with the Supreme Court against judgements on appeal and judgements given at first and only instance within three months of the judgement being given. The Supreme Court does not review the facts of a case: its role is to decide whether procedural formalities have not been complied with or the law misapplied. If the Court strikes down (casser) a judgement it refers it back, if further examination of the facts is necessary, to a lower court which has to hear the case afresh taking the Supreme Court's ruling into account. In other cases the Supreme Court may conclude the case itself. Even if the parties do not lodge an appeal in cassation the Procurator General may do so in the public interest and in "the interests of the law".

127. Special procedures. Applications for interlocutory injunctions may be made to the President of the district court requesting urgent provisional rulings. Because of the provisional nature of these rulings the court deciding on the main proceedings is not bound by them. Provisional rulings may also be requested in the course of main proceedings, notably before the sub-district court. There are different procedural rules governing certain areas of law, such as the law of persons and family law.

128. Rules of evidence. Evidence may in principle take any form. The parties may also give evidence during proceedings. It is the court which decides, in every case, on the value of the evidence.

129. Execution. A court decision may be enforced with the assistance of the bailiff, who is a government official. A number of methods of execution of judgements are prescribed by law. Seizure to effect recovery compels the party concerned to fulfil an obligation to pay a sum of money, while other

forms of seizure require the surrender or delivery of goods. Seizure of assets may be under a writ of execution following a judgement, or provisional in order to protect the interests of a creditor in the absence of a judgement, although the court's permission is required for such seizure. Another means of execution is astreinte, which is imposed by the court if the defendant fails to comply with the judgement.

130. Alternative ways of settling disputes. If both parties so choose and the law permits, they may submit their dispute to arbitration. Arbitration has been the subject of extensive statutory regulation since 1986, inspired in many ways by the United Model Law on International Commercial Arbitration of 1985. Another alternative form is the binding third party ruling.

(c) Administrative law

131. The Netherlands has a special system of legal protection against the decisions of the Government quite apart from the protection offered by the Civil and Criminal Codes. The civil courts may, however, provide additional legal protection against certain acts by the authorities.

132. With the introduction of the General Administrative Law Act (Algemene Wet Bestuursrecht) on 1 January 1994 the system of administrative law was reformed. The Act laid down a uniform system of procedural administrative law which all administrative courts must apply. It is based on the principle that appeals may be lodged with the administrative courts against orders within the meaning of the Act. However, before the interested party can bring his case before an administrative court, he must have first lodged an objection unless a preliminary administrative procedure has been held or Part 3.5 of the Act applied. The district court is the competent court provided the Act does not specify otherwise (sect. 8:6). An appeal against the judgement of the district court may be lodged with the Administrative Law Division of the Council of State (sect. 37 of the Council of State Act) unless appeal lies to the Central Appeals Tribunal (sect. 18 of the Social Security Appeals Act (Beroepswet)). The civil courts offer additional protection against certain actions of the authorities which cannot be appealed against before the administrative courts.

133. The demarcation of competence between the civil and administrative courts is regulated as follows. With regard to the question of whether recourse may be had to the protection afforded by the administrative legal system, the decisive factor is whether a written order or decision given by a body which may be deemed to be a government body is at issue. The definition of such a body includes not only the traditional tiers of government (central, provincial and municipal authorities) but also all other bodies which exercise government powers. The competence of the administrative courts is a broad one; however, if these courts have no jurisdiction, recourse may be had to the civil courts. Generally speaking, the demarcation of competence between administrative courts and civil courts does not give rise to problems and the system ensures that members of the public are always able to present their complaints to one court or another.

134. In the Netherlands it is the Government itself and the independent judiciary which provide legal protection in administrative matters. In this the Netherlands differs from many other countries. The procedure involved is outlined below.

135. When a government body issues an order, the order itself states how and within what period of time objections may be lodged against it. In most cases objections may be lodged with the government body itself (only in a few exceptional cases may the courts be approached directly). This allows the body concerned to address any shortcomings and thereby avoid unnecessary court proceedings. An objection need not be restricted to a claim that a statutory provision has been contravened; policy considerations may also be addressed. The individual involved is given the opportunity to explain his objections orally. The government body then reviews all aspects of its order (i.e. its lawfulness and effectiveness as policy) and issues a new order if it considers the objection well founded. If the individual in question is still dissatisfied with either the new order or the dismissal of his objection, he may lodge an appeal with the district court. Even if the government body has not reached a decision on the objection within the statutory period, the individual may nevertheless lodge an appeal with the district court, thus ensuring that a government body cannot prevent a member of the public having recourse to the courts.

136. Proceedings before the district courts are laid down in considerable detail in law. Judgement must always be pronounced in public and the grounds on which it is based clearly stated. It may declare the appeal inadmissible or unfounded, or well founded. In the latter case the contested order is rescinded and the government body in question must issue a new order which takes the judgement into account. (Appeal against the new order lies directly to the district court.) The court may also decide that a new order is unnecessary: the judgement then takes the place of the original order.

137. Appeals may also be lodged against a district court judgement, and this is stated in the judgement. The same procedure is followed as in the case of appeal to the district court. If the appeal is granted, the case is referred back to the district court concerned or is disposed of by the appeal court itself. Review of a court judgement is possible.

138. Proceedings before the courts may be divided into two stages: first the written stage, in which information is gathered and the case file assembled, and second a hearing of the facts in open court. Witnesses and experts may be called and the parties heard. Such cases are usually heard by three judges sitting together, although less complex cases may be heard by a judge sitting alone, even on appeal.

139. The institution of objection or appeal proceedings with the government body or the district court does not mean that the contested order loses its effect. In some cases this would be desirable; a separate procedure before the district court has been created, in which the court may decide that an order will come into effect only after a certain period of time has elapsed, for example after proceedings have been concluded. No appeal lies from such judgements.

140. The system of protection under the administrative law has its own special features. The idea of the separation of powers which underlies the division of competence in the Netherlands means that the courts are bound to respect the freedom of government bodies to determine policy. This is expressed in the limits on the courts' competence to review administrative orders and decisions, limits which have largely been established by case law. In brief, the courts examine whether the order has contravened any statutory provisions (including directly applicable treaty provisions within the meaning of the Constitution) and if it passes the test of "reasonability". The latter test does of course bring the freedom of administrative bodies to determine policy within the scope of the courts, although any review of such freedom is always conducted with a certain circumspection. The dividing line between the test of lawfulness and that of reasonability is becoming less and less sharp. Examination of decisions in the light of directly applicable treaty provisions that are binding on all persons has already led on several occasions to national legislation being declared inapplicable.

141. The fact that treaty provisions have actually been invoked before the courts and taken into account in reviewing contested orders can be illustrated by a judgement well known in the Netherlands concerning article 26 of the International Covenant on Civil and Political Rights. National legislation was found to be discriminating between men and women in the matter of pension rights. The court ruled that the Act in question should be declared inapplicable, and it was subsequently amended to bring it in line with article 26 of the ICCPR. Legislation is also frequently examined in the light of the provisions of the European Convention on Human Rights. In practice, the courts have broad scope for such examination of legislation.

142. Another characteristic feature of the administrative legal protection system is its accessibility to the public. This is the result of a deliberate choice on the part of the legislature. Accessibility is guaranteed by the fact that there is no charge involved when lodging an objection with the government body itself and that even though court fees in appeal proceedings are low it is nevertheless possible to obtain assistance from the State towards the cost. These are statutory provisions. Should the State refuse to provide financial assistance, this decision too can be put to appeal. If the appellant wins his case, the court fees will be reimbursed.

143. It is not compulsory to engage the services of counsel: unlike under civil and criminal law, litigants in the administrative courts may conduct their own case.

144. As stated above, the State provides legal aid either in the form of financial assistance or the assignment of counsel: the conditions governing eligibility are laid down by law. In most cases people receiving legal aid have to make a contribution, which is reimbursed if the individual concerned wins his case. In this administrative law is no different from civil and criminal law.

145. Finally, it is important to note that a government body is obliged to indicate whenever it issues an order how and within what period objections should be lodged. The same applies to court judgements. In this way, those concerned are always fully informed of the possibility of appeal.

146. In contrast to proceedings under civil law, the aim of administrative proceedings is the objective discovery of truth. In this administrative law resembles the criminal law. In principle, the court confines itself to an assessment of the individual's complaint; nevertheless, it can also go beyond the complaint itself in order to ascertain what the order or decision should be in law. The court plays an active role during proceedings, which may lead to the appeal being declared well founded on grounds other than those submitted by the appellant. However, it is unusual for the court to give a judgement which is less favourable to the appellant than the original decision of the government body (reformatio in peius). The basis for this is the belief that the individual should not be worse off after lodging an appeal with the court, otherwise this would deter people from applying to the courts.

147. Lodging an objection with the government body in question may well lead to a less favourable outcome in certain cases. Such a decision can, however, be the subject of an appeal to the courts. The government body may also in certain circumstances pay compensation.

148. In contrast to criminal and private law, in administrative law proceedings all means of evidence are in principle permitted; furthermore, the allocation of the burden of proof is a matter for the court, and dependent on the specific circumstances, rather than being laid down by law. The general rule which applies in civil procedural law of "he who claims shall provide proof" does not, on the whole, apply in administrative procedural law. In general, it is sufficient for the appellant to establish a plausible case, following which the government body has to provide cogent reasons supporting the opposite view. In this way the courts can adopt a flexible approach to questions of evidence and the burden of proof.

149. The protection afforded by the administrative law in the Netherlands derives from a balanced system with very specific characteristics which enables the courts to settle administrative disputes in an effective manner. A special feature is the preliminary stage in which objections may be lodged with the government body in question prior to appeal proceedings before the courts, which expedites the process. Those wishing to avail themselves of legal protection encounter few if any obstacles. Examination in the light of treaty provisions is a common feature.

G. The Council of State (Raad van State)

150. Chapter 4 of the Constitution is entirely devoted to government institutions fulfilling an advisory role to the Government, and to a lesser extent also to Parliament. Pre-eminent among these institutions is the Council of State, which was set up in 1531. During the period of the Republic of the United Provinces, the Council of State was an executive and advisory body to the States General. It was partly responsible for the executive functions of the confederation of the seven provinces. When the Kingdom of the Netherlands was created the Council of State became an advisory body to the Sovereign. In the early years of the Kingdom the same function was fulfilled by the Council of Ministers and the cabinet council. There was no clear division of responsibilities, however. The introduction of ministerial

accountability changed this. The Council of State survived as the only advisory body to the Government in which the Sovereign and ministers met together.

151. The Constitution outlines a few main points concerning the composition, organization and powers of the Council of State. More detailed rules are to be found in the Council of State Act (Wet op de Raad van State). The Sovereign is President of the Council of State, a role which today is purely ceremonial. The Sovereign does not have a vote in the Council. The same applies to the heir to the throne, who automatically has a seat on the Council after attaining the age of 18.

152. The Council of State further comprises a Vice-President, who in practice chairs the meetings, and up to 28 members. In addition up to 14 part-time associate members may be appointed. Members of the Council of State are appointed for life by Royal Decree. They retire at the age of 70. Their position is comparable to that of the judiciary, therefore, and this is also true with respect to other aspects of their legal position. Members of the Council of State can only be suspended or dismissed by the Council itself in circumstances laid down by Act of Parliament.

153. Under the Constitution and the Council of State Act, the Council of State is (first and foremost) an advisory body. A distinction can be made between its advisory role on behalf of the Government and that on behalf of Parliament. The Government is required to hear the views of the Council of State on government bills, draft Orders in Council and proposals to ratify treaties. Departures from this requirement are possible if authorized by Act of Parliament and the Council of State Act does make provision for one such exception. Legislative proposals are heard by the Council of State before they are submitted to the Lower House.

154. The advice of the Council of State is public. In principle the Council's advice on government bills will be forwarded to the States General. In practice, especially in the Lower House, this advice is sometimes used as a basis for criticism of the Government.

155. Finally, it should be recalled that under Dutch constitutional law it is possible for the Council of State to exercise the role of government. Under article 38 of the Constitution, the Council of State may assume the powers of the Sovereign under certain circumstances. It is just conceivable, therefore, that the legislative, executive and judicial functions of State could be exercised by a single government institution.

H. The Netherlands Court of Audit (Algemene Rekenkamer)

156. In order for the States General, to make the best use of funds, it is necessary for an accurate check to be kept upon the regularity and efficiency of revenue and expenditure. As States General are not really equipped to do this for themselves, a specialized organization is necessary. The Constitution allocates this task to the General Court of Audit. Article 76 of the Constitution states that the Court of Audit is responsible for scrutinizing the revenue and expenditure of the State.

157. The current Constitution contains three provisions on the Court of Audit (arts. 76-78). Further regulations can be found in the 1976 Government Accounts Act. (Comptabiliteitswet).

158. The Constitution provides that members of the Court of Audit are appointed for life by Royal Decree from a shortlist of three made up by the Lower House. The shortlist of recommendations from the House is intended to guarantee that the Court of Audit is independent of the Government. The rules governing dismissal and the legal position of members of the Court of Audit are the same as those for members of the judiciary. Like the Council of State the Court of Audit has a large staff of about 200, without whose work it would not be possible to achieve an effective financial audit.

159. Nowhere does the Constitution explicitly attribute an advisory role to the Court of Audit. The Government Accounts Act contains a number of provisions which refer to an advisory role, however. The Court of Audit can advise on the efficiency of national administration and the organization and functioning of government departments. In addition, it provides the ministers concerned, the Minister of Finance and the two Houses of the States General with any information which it deems necessary in the interests of the State. The recommendations of the Court of Audit are made public.

160. The Court of Audit has three other functions. Firstly, it conducts a cash audit of the civil service departments which manage national finances and are therefore responsible for them. Secondly, it supervises State revenue and expenditure. Its investigation into the regularity of the accounts must, among other things, answer the question as to whether the expenditure conforms to the allocation in the budget item concerned. Thirdly, the Court of Audit devotes its attention to the efficiency of central government financial management.

I. Decentralized authorities

161. Decentralized government consists of the provincial and municipal authorities, which together with Central Government possess general administrative and regulatory powers. This is known as territorial decentralization. In addition Dutch constitutional law distinguishes various forms of "functional" decentralization. This means the decentralized offices which are authorized to serve particular purposes. They possess regulatory and administrative powers in specific areas. Examples are provided by the water boards (waterschappen), the commodity boards (produktschappen), the main industrial boards (hoofdbedrijfschappen) and the industrial boards (bedrijfsschappen).

162. With respect to the operational area of the decentralized government authorities, Dutch constitutional law distinguishes between autonomous powers (autonomie) and devolved powers (medebewind). Regarding the first category, article 124 of the Constitution states that the decentralized authorities have the power to regulate and manage their own affairs, while with regard to the second it states that regulation and administration can be required by or pursuant to an Act of Parliament. In areas where it has autonomous authority

the decentralized institution conducts its own policies, deciding for itself its aims and means. Where it is a case of devolved powers, it carries out instructions given by other government institutions.

163. The composition and organization of the institutions of the provinces and the municipalities are broadly similar. Articles 123-136 of the Constitution contain a number of basic provisions, and refer to the legislature for the rest.

164. The provincial and municipal authorities are structured along republican lines and headed by the provincial council (provinciale staten) and the municipal council (gemeenteraad) respectively. There is no question of power being vested in one person at the top. The members of these representative bodies are directly elected by proportional representation for a period of four years by Dutch nationals who are resident in the province or municipality. In 1983 the Constitution made it possible for residents who are not Dutch to vote in municipal council elections.

165. The number of members in the provincial and municipal councils depends upon the resident population. Membership varies from 31 to 83 in the provincial councils and from 9 to 45 in the municipal councils. Certain public functions (including ministers and secretaries of State) may not be combined with membership of these representative bodies.

166. The provincial executive (gedeputeerde staten) is the executive body for the provinces and comprises the Queen's Commissioner and the members. The executive body for the municipal authority is the municipal executive (college van burgemeester en wethouders). The members of the provincial and municipal executives are appointed for four years from and by the provincial and municipal councils respectively. Their term of office ends at the same time as that of the members of the representative bodies.

167. The provincial executive has at least three and no more than nine members. The municipal executive comprises no more than 20 per cent of the number of municipal councillors, with a minimum of two executive members. Members of the municipal and provincial executives may not hold certain offices at the same time. Public office with provincial or central government may not, in some cases, be combined with the office of executive member of a municipal council, while a member of the provincial executive cannot hold office at the same time with a municipal council or water board in his own province.

168. The provincial and municipal executives are collegiate administrative bodies. Authority belongs to the group, not to individual members. In practice the activities of the executive are shared out among its members so that each has a particular portfolio. Thus, although members frequently take decisions in their own policy areas, the formal authority to take decisions is reserved for the collective. The relationship between the executive and the representative bodies is one based on accountability. Members of the provincial and municipal executives are jointly and separately accountable to the provincial and municipal councils respectively for the administrative

activities which the executives carry out. It follows from this that they have a duty to supply information to the members of the provincial and municipal councils, unless this would be against the public interest.

169. The other public offices referred to in the Constitution are the Queen's Commissioner (Commissaris van de Koningin) for the provinces and the mayor (burgemeester) for the municipal councils. Both officials are appointed by Royal Decree and reappointed for six years. The Provinces Act and Municipalities Act contain provisions giving the provincial and municipal councils a say in their appointment. They can set up a committee from among their own members which assesses candidates and reports to the Minister of the Interior, who nominates candidates to the Sovereign for appointment.

170. The Queen's Commissioner and the mayor are accountable to the provincial and municipal councils respectively. They have a duty to disclose information to members of the representative bodies. In the case of the Queen's Commissioner this duty does not apply when he is acting as a central government officer. In this function he is answerable only to the Minister of the Interior.

171. Finally, both the Provinces Act and the Municipalities Act designate a civil servant to assist the officials mentioned above in performing their duties. At provincial level he is known as the clerk (griffier), in the local authority he is known as the secretary (secretaris).

172. Under the Constitution the provincial and municipal councils are at the head of the province and municipality respectively. Except where there are statutory provisions to the contrary, this means that they possess the full range of regulatory and administrative powers. The Constitution also states that they are competent to enact by-laws (verordeningen), both autonomously and where powers have been devolved. This ceases to apply only if these powers have been allocated or transferred to other bodies by statute, or through by-laws issued by the provincial or municipal authority in accordance with the statutory provisions.

173. More detailed regulations on the powers of the provincial and municipal councils are contained in the Provinces Act and the Municipalities Act. These acts contain the basic provisions concerning the autonomous authority to issue by-laws, i.e. when the provincial and municipal councils issue by-laws which they consider to be in the interests of their province or municipality. The issuing of by-laws through devolved powers is, in principle, also a matter for the provincial and municipal councils unless this power has been assigned by or pursuant to an Act of Parliament to the provincial executive or the Queen's Commissioner in the case of the provinces, or the municipal executive or the mayor in the case of the local authority.

174. The Queen's Commissioner is not only a provincial functionary, he is also a central government official. In this capacity, under rules laid down by central government instruction, he is charged with the coordination of civil defence, and facilitating the cooperation of civil servants who are working in the province. He also has to make regular visits to municipalities and recommend candidates for appointment as mayors to the Minister of the Interior.

175. The mayor has important powers in the sphere of maintaining public order, through the local police who are under his authority. Where public disturbances occur, or there is a serious fear that they will do so, he is authorized to give whatever orders are necessary to keep the peace. The mayor also has supreme command when there is a fire, and he supervises public meetings, public entertainments and buildings which are open to the public. The Municipalities Act furthermore includes certain emergency provisions which grant the mayor far-reaching powers. In the event of a riot, serious disorder or disaster, or a serious threat of one of these emergencies, the mayor is authorized to give any orders he deems necessary to maintain public order or limit the danger. In doing so he may depart from other regulations except those laid down in the Constitution.

III. GENERAL LEGAL FRAMEWORK FOR THE PROTECTION OF HUMAN RIGHTS

A. Competent authorities

176. The rules and regulations regarding the general legal framework for the protection of human rights in the Netherlands are to be found in the Constitution. In this respect the following articles are of particular relevance:

Article 112

1. The judgement of disputes involving rights under civil law and debts shall be the responsibility of the judiciary.

2. Responsibility for the judgement of disputes which do not arise from matters of civil law may be granted by Act of Parliament either to the judiciary or to courts that do not form part of the judiciary. The method of dealing with such cases and the consequences of decisions shall be regulated by Act of Parliament.

Article 113

1. The judgement of offences shall also be the responsibility of the judiciary.

2. Disciplinary proceedings established by government bodies shall be regulated by Act of Parliament.

3. A sentence entailing deprivation of liberty may be imposed only by the judiciary.

4. Different rules may be established by Act of Parliament for the trial of cases outside the Netherlands and for martial law.

Article 114

Capital punishment may not be imposed.

Article 115

Appeal to a higher administrative authority shall be admissible in the case of the disputes referred to in article 112, paragraph 2.

Article 116

1. The courts which form part of the judiciary shall be specified by Act of Parliament.

2. The organization, composition and powers of the judiciary shall be regulated by Act of Parliament.

3. In cases provided for by Act of Parliament, persons who are not members of the judiciary may take part with members of the judiciary in the administration of justice.

4. The supervision by members of the judiciary responsible for the administration of justice of the manner in which such members and the persons referred to in the previous paragraph fulfil their duties shall be regulated by Act of Parliament.

Article 117

1. Members of the judiciary responsible for the administration of justice and the Procurator General at the Supreme Court shall be appointed for life by Royal Decree.

2. Such persons shall cease to hold office on resignation or on attaining an age to be determined by Act of Parliament.

3. In cases laid down by Act of Parliament such persons may be suspended or dismissed by a court that is part of the judiciary and designated by Act of Parliament.

4. Their legal status shall in other respects be regulated by Act of Parliament.

Article 118

1. The members of the Supreme Court of the Netherlands shall be appointed from a list of three persons drawn up by the Lower House of the States General.

2. In the cases and within the limits laid down by Act of Parliament, the Supreme Court shall be responsible for annulling court judgements which infringe the law (cassation).

3. Additional duties may be assigned to the Supreme Court by Act of Parliament.

Article 119

Present and former members of the States General, ministers and State secretaries shall be tried by the Supreme Court for offences committed while in office. Proceedings shall be instituted by Royal Decree or by a resolution of the Lower House.

Article 120

The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts.

Article 121

Except in cases laid down by Act of Parliament, trials shall be held in public and judgements shall specify the grounds on which they are based. Judgements shall be pronounced in public.

Article 122

1. Remission of sentence shall be granted by Royal Decree upon the recommendation of a court designated by Act of Parliament and with due regard to regulations to be laid down by or pursuant to Act of Parliament.

2. Pardons shall be granted by or pursuant to Act of Parliament.

Article 136

Disputes between public bodies shall be settled by Royal Decree unless they fall within the competence of the judiciary or decisions are referred to other bodies by Act of Parliament.

177. Please see chapter II for a description of the Dutch judiciary and court procedures. Only very specific Dutch legislation on the legal protection of individuals will be discussed below.

B. The Equal Treatment Act

178. General. Article 1 of the Constitution reads as follows: "All persons in the Netherlands shall be treated equally in equal circumstances. Discrimination on the grounds of religion, belief, political opinion, race or sex or on any other grounds whatsoever shall not be permitted."

179. The Equal Treatment Act was published in the 1994 Bulletin of Acts and Decrees (No. 230) and entered into force on 1 September 1994. The Act constitutes a further elaboration of the principle of equality and the prohibition on discrimination laid down in the second sentence of article 1 of the Constitution, the human rights conventions and the prohibition on discrimination on the grounds of heterosexual or homosexual orientation and civil status.

180. The Equal Treatment Act lays down rules providing protection in a number of areas against discrimination on specified grounds. It prohibits direct and indirect discrimination on grounds of: religion or belief; political opinion; race; sex; nationality; heterosexual or homosexual orientation; civil status.

181. The areas covered by the Act comprise:

(a) Employment: employers may not discriminate with regard to recruitment and selection, salaries and other terms of employment, training, promotion and dismissal; access to and further development within the professions (e.g. doctors, notaries and lawyers);

(b) Advice or information regarding the choice of educational establishment or career;

(c) Goods and services: discrimination in offering goods and services or in concluding and implementing agreements on the subject (in particular in housing, education, health, welfare, sport and culture).

182. What the Act and international agreements banning discrimination have in common is that they prohibit discrimination both in general terms and on the basis of specific personal criteria such as sex or race. The purpose of the prohibition is to combat discrimination on the grounds of characteristics or features which are irrelevant to the determination of rights and obligations in a particular domain.

183. Furthermore, the Act offers protection against discrimination on the grounds of political opinion. This does not refer to membership of associations except in the matter of supplying goods and services. If an association or political party imposes certain conditions for membership and such conditions might lead to discrimination on one of the grounds referred to in the Act, an action may be brought against the party or association before the civil courts (tort) but not under the Act. The prohibition contained in the Act means that it is forbidden to treat someone differently on the grounds of their membership of a particular political party unless the conditions imposed are ones relating to political opinion which may reasonably be required for the holding of positions in executive and advisory bodies or posts involving confidentiality.

184. For the purposes of implementing section 2, subsection 6, of the Act, the Equal Treatment Decree contains a more detailed description of cases in which discrimination is permitted, i.e. where the protection of women is involved and in cases where gender, physical characteristics related to race, and nationality constitute the determining factor. The Decree is an integral part of the Act. It is also important to note that there is a decree governing the methods of operation of the Equal Treatment Commission, giving interested parties the opportunity to familiarize themselves with the procedures of the Commission and guaranteeing the soundness of those procedures.

185. Exceptions. The Act prohibits direct and indirect discrimination on the grounds specified, with certain statutory exceptions. These are necessary in order to protect the fundamental rights of others, such as the right to

privacy, freedom of religion and belief and the freedom of education. The Decree also contains a number of exceptions in cases where discrimination is objectively justified.

186. Legal certainty. The Act provides legal certainty because it determines which forms of discrimination are never permitted. Members of the public can therefore be sure of what constitutes discrimination in their relations with the State. However, in cases between individuals it is not always clear what grounds there are for justification since various fundamental rights may conflict with each other.

187. Legal remedies. Any person who feels he or she has suffered discrimination may bring the case before the courts, either directly or through a representative body, under the Equal Treatment Act. Under section 12 of the Act, the Equal Treatment Commission is responsible for monitoring compliance with the Act, article 1637ij of the Civil Code and the Equal Opportunities Act. The two latter items of legislation apply only to the equal treatment of men and women in the matter of employment, while the Equal Treatment Act guarantees equal treatment in other areas (see the Decree referred to above). The Commission's field of operation is a broad one: it examines specific instances of conduct, decides whether they are unlawful and may make recommendations.

188. The value of the Act in terms of legal protection lies in the fact that it makes known the factual substance of the prohibition by listing specific criteria. Both those who suffer discrimination and third parties who are aware of an instance of discrimination may independently of each other submit a written complaint. The Commission may then set up an inquiry with which all concerned must cooperate, publish its findings (possibly involving negative publicity for those contravening the Act) and can refer the case to the Public Prosecutions Department or the civil courts.

189. The Commission was set up in order to ensure compliance with the Act. It was assumed that the fact that legal representation is not compulsory and that complaints may be brought free of charge would induce individuals to make use of the Commission's services. The underlying principle was also that the Commission's decisions would have such authority that the parties would voluntarily accept its findings and have no need to pursue the matter through the courts. The aim was to avoid adding to the workload of the courts.

C. The Equal Treatment Act and related legislation

190. Any person who believes he or she has suffered discrimination may report this to the Public Prosecutions Department, claiming contravention of articles 137g and 429 quater of the Criminal Code, bring an action for tort before the civil courts or lodge a complaint with the Equal Treatment Commission. It is also possible, if the person concerned so wishes, to pursue all three avenues concurrently. However, it is important to bear in mind the fact that the criminal law makes "discrimination" an offence, while the Act prohibits "the making of a distinction" (het maken van onderscheid). Establishing that a distinction has been made in contravention of the Equal Treatment Act does not therefore mean that discrimination within the meaning of articles 137g or 429 quater has occurred. The preference is often to seek

redress under the civil or administrative law rather than institute criminal proceedings. The first two avenues have the advantage over the criminal law that the question of rectifying the situation for the victim is examined. A criminal prosecution is the most appropriate course of action in cases where the civil or administrative law is inapplicable or where an intolerable violation of the legal order has taken place. Where discrimination on grounds of race has occurred in such cases, if the offence was committed intentionally, a criminal prosecution under article 137g will be initiated.

191. The fundamental right to freedom from discrimination aims to protect essential features of personal identity by prohibiting distinctions made on grounds of race, sex, religion, etc. This does not mean that every distinction constitutes discrimination. The limits of the prohibition on discrimination lie in the objective justification for a particular distinction made, and the Act lists the cases in which such justification exists. Freedom from discrimination, like other fundamental rights, is primarily an aspect of the relationship between State and individuals, although it is obviously an element in that between individuals and between individuals and community-based organizations. The content of other fundamental rights may also result in the effects of the prohibition on discrimination varying according to circumstances. The Equal Treatment Act provides a legal basis for the application of the specific criteria in various areas of the life of society. In many cases the prohibition on discrimination has the same significance in the relationship between State and individual as in that between non-government organizations and individuals. As a general rule, these organizations are no more entitled than the State to apply criteria which lead to discrimination in their activities. Nevertheless, there are cases in which this must be considered permissible, in view of the legal relationship involved. For example, whereas the State may not take religious belief into account, a religious organization should be able to. Other forms of discrimination are in principle unlawful in this context, yet under certain circumstances the nature of the legal relationship may mean that an indirect distinction on such grounds may be made, not in isolation but as a result of its relationship to the permissible distinction.

192. In addition to the grounds expressly stated in the second sentence of article 1 of the Constitution, the Equal Treatment Act also lists heterosexual or homosexual orientation and civil status as grounds on which no discrimination may be made. In accordance with the International Convention on the Elimination of All Forms of Racial Discrimination and established case law, the term "race" should be interpreted in a broad sense to include skin colour, origin and national or ethnic background. Just as in the Equal Opportunities Act, a direct distinction on grounds of sex also includes distinctions based on pregnancy, childbirth and motherhood. Sexual orientation refers to a person's orientation with regard to the expression of sexual feelings and emotions and relationships. Civil status refers primarily to marital status, so that discrimination on the grounds of whether a person is married or not is prohibited. This also covers any distinction that might be made between legitimate, illegitimate and adoptive children. In certain situations a distinction made on the grounds of lifestyle might produce indirect discrimination on the grounds of civil status. Of course, taking

into account the composition of a family or the number of persons involved when deciding on the allocation of certain facilities (for example in renting accommodation) falls outside the scope of the prohibition.

193. The prohibition on discrimination covers both direct and indirect distinction. All direct distinction, that is to say, distinction based on the grounds specified, is prohibited, unless specific exceptions have been made. Indirect distinction arises when a distinction based on a quality or behaviour other than that specified in the Act leads in practice to disadvantage to - primarily - persons belonging to the categories protected by the Act. Indirect discrimination is also prohibited, unless the law determines that the prohibition is inapplicable.

D. The National Ombudsman

194. When an individual believes that action on the part of a representative of Central Government or an autonomous administrative authority or the police gives cause for a complaint he may address himself to the National Ombudsman, which is an independent body set up to investigate such complaints (see art. 108 of the Constitution).

195. The National Ombudsman is one of the High Councils of State, the others being the Upper and Lower Houses of the States General, the Council of State and the General Court of Audit. Like the judiciary, the High Councils of State are formally independent of Government. An unusual feature of the institution of the Ombudsman in terms of Dutch constitutional law and one which confirms its independence from the executive is the fact that the Ombudsman is appointed by Parliament. A term of appointment lasts for six years.

196. The Ombudsman's office employs some 70 staff and has three investigation divisions. The first is responsible for evaluating the admissibility of complaints as groundwork for the Ombudsman's decision as to whether to investigate the complaint or not (this division provides a great deal of information to members of the public by telephone). The second investigates cases involving the police and the Ministries of General Affairs, the Interior, Foreign Affairs and Justice. The third is responsible for the other ministries, with particular reference to the field of employment and income (for example taxation, subsidies and manpower services agencies).

197. Both natural and legal persons may submit complaints, having first informed the person or body concerned so that they may give their point of view. The incident in question may not have occurred more than a year ago. As a rule, the Ombudsman will not investigate if the person could have appealed to the administrative courts and did not do so or has not yet done so. Complaints may be submitted to the Ombudsman free of charge.

198. The Ombudsman is also empowered to conduct an investigation on his own initiative, usually in order to examine problems of a more structural nature in the way administrative authorities implement policy. For example, the Ombudsman has initiated such an investigation into the registration of data regarding the treatment of detainees. In his report, he advised that certain data, including information on the physical condition of the detainee, use of

medicines, visits to the doctor or nurse, etc. should be recorded as a matter of course. These recommendations have since been incorporated into the Police Instructions based on the Police Act.

199. The Ombudsman investigates whether the government body in question has exercised due care in carrying out its tasks. More specifically, this means that the Ombudsman examines whether the actions of a particular government body were in accordance with statutory provisions and with written and unwritten norms. Unwritten norms include the principles of reasonability and proportionality, the balance between means and ends, the principles of legal certainty and confidentiality, etc. The Ombudsman has far-reaching investigative powers, including that of on-the-spot examination and of summoning the body in question, the complainant, witnesses and experts to appear. Witnesses may be heard under oath. The body concerned is obliged to provide the information required and to allow the Ombudsman access to all locations where it operates. The obligation to provide information also extends to documents and data which are in principle confidential, for example in cases in which the security and intelligence services are involved, or certain judicial or tax data. The Ombudsman himself has a statutory duty of confidentiality.

200. Once he has established the facts of the case, the Ombudsman draws up a report of his findings which is sent to the complainant and the government body concerned. Both may respond within two weeks. In some cases the government body may, in response to the complaint, have taken measures to remedy the situation, in which case the complainant may decide to withdraw his complaint.

201. As stated above, the Ombudsman issues a report of the investigation and sends it to the complainant, relevant government body and Parliament (for the latter the names are removed). The Ombudsman states in his report whether he finds the actions of the body in question to have been proper or not. He may also issue recommendations. If the complainant has already withdrawn his complaint because the government body has taken steps to remedy the situation which he finds satisfactory, the Ombudsman decides on the merits of each case whether he will issue a report or not.

202. The Ombudsman's decision is not formally enforceable. It is up to the body concerned to implement his findings or not. However, the authority of the Ombudsman, which derives from the quality of his work, the support and interest he receives from Parliament and the public nature of his reports, means that his recommendations are nearly always followed. Often the body in question will take measures in favour of a complainant whose complaint has been upheld by the Ombudsman. But the Ombudsman's work also has more structural effects; in response to one or more problems noted in separate reports or in the Ombudsman's Annual Report, government bodies may amend their operational practice or even existing regulations in order to avoid complaints in the future.

203. The Ombudsman publishes an Annual Report which is discussed by Parliament (the Lower House). The permanent committee first decides which parts of the report it wishes to discuss with the relevant minister or State secretary. This is followed by a full debate in the Lower House, in which the Minister of

the Interior speaks on behalf of the Government. The 1994 Annual Report revealed that the number of complaints is still rising: whereas from 1982 to 1991 (the first 10 years of the Ombudsman's existence) 32,640 complaints were received, in the 3 years that followed a total of 15,074 were submitted. The rise is partly accounted for by increased public awareness and trust in the Ombudsman. In 1994 5,890 complaints were received and 5,719 dealt with. In 934 cases a report was issued. In 1993 the Ombudsman issued 1,067 reports.

E. Legal aid in the Netherlands

204. The Netherlands has an extensive State-subsidized legal aid system which ensures compliance with its various obligations under treaties and the Constitution. The Legal Aid Act (WRB) constitutes the legal basis for this system.

205. Under the terms of the Legal Aid Act a litigant can obtain State-subsidized legal aid provided he has insufficient funds to pay the fees in full himself and if the matter in question fulfils certain criteria as regards its substance. If the net income of that person is no more than 1½ times the statutory minimum income, then he is eligible for legal aid unless he has substantial assets. A case involving, for example, a small amount of money, or one whose chances of success are virtually nil is not eligible for legal aid. Nor is aid provided if no specific legal expertise is required and the litigant could conduct his own case.

206. Legal representation as part of the legal aid system is provided partly by advocates, of whom there are approximately 8,000 in the Netherlands (advocates have a degree in law and have done supplementary training in a law firm to qualify them to appear before the courts). Litigants can also apply to the legal aid advice centres in each court district. The centres are staffed by lawyers who usually offer short-term legal advice in cases which have not or not yet been brought before the courts.

207. The Legal Aid Councils (one in each appeal court district) are responsible for the organization of the legal aid system. They ensure that there is a sufficient number of suitably qualified lawyers available by imposing certain conditions on the legal aid advice centres and the advocates who wish to form part of the system. Attached to each Council is a legal aid office which assesses applications for State-subsidized legal aid and processes advocates' bills. The Legal Aid Council is an independent administrative body which is fully funded by the State and is accountable to Central Government for the efficient and regular use of the funds at its disposal.

208. A person applying to a legal aid advice centre first attends a surgery hour. If the case cannot be dealt with swiftly, he must then, together with a member of staff, apply for the assignment of a lawyer to his case. If he has already approached a lawyer, he will still first have to apply for assignment to the Legal Aid Council. If the latter grants his application, the lawyer in question will be assigned to the litigant and legal aid granted.

209. In order to enable the legal aid office to assess the applicant's financial status, he must obtain from the municipality in which he lives a

statement of income and assets. When an application is granted the person concerned is also informed of the level of the contribution which must usually be paid. This amount can vary from f. 60 for applicants whose income is at the level of National Assistance to nearly f. 1,000 for applicants whose income only just falls within the financial limits of the legal aid system. The contribution is never greater than the fee which the lawyer concerned receives for his services in the matter. If the application for assignment is refused, the applicant may appeal to the Legal Aid Council, thereafter, if necessary, to the district court and finally the Council of State.

210. Legal aid may be granted under the system regardless of the nationality or residential status of the applicant provided the legal interest at issue lies within the domain of Dutch law. Legal aid for asylum-seekers is organized separately, as it is for other categories of persons such as those remanded in police custody.

211. Roughly 50 per cent of the Dutch population fall within the financial limits on the legal aid system. In practice the people who make most use of the system are those whose income is at National Assistance level. Every year some 225,000 assignments are granted for civil and administrative proceedings and 75,000 for criminal cases. The total central government budget for the system amounts to f. 370 million (0.06 per cent of GNP).

F. Compensation for victims and rehabilitation

212. Guidelines for dealing with the victims of crime have been available to the police and Public Prosecutions Department since 1986. During the intervening years, they have been amended and added to.

213. Three committees have played a key in developing the guidelines. The first of these is the Working Group on Violent Sexual Offences (Werkgroep Aangifte Sexuele Geweldsmisdrijven), which in 1981 made several recommendations to the police concerning the treatment of victims of sexual offences. At the heart of these recommendations lay the notion of secondary traumatization, which the committee sought to prevent by improving victim support among law enforcement agencies.

214. The second committee, the Working Group on Judicial Policy and Victims (Werkgroep Justitieel Beleid en Slachtoffer), has explored the scope for improving the position of victims in the criminal justice system. In 1985, the committee published a report containing several recommendations. These included restitution, which the committee saw as making a valuable contribution to the rehabilitation of offenders by confronting them with the consequences of their actions. The payment of restitution allows offenders to make amends for the harm they have caused, and is a constructive act that can benefit their self-esteem.

215. In 1986, the recommendations of the Working Group on Violent Sexual Offences and the Working Group on Judicial Policy and victims were combined to make up the Guidelines for the Public Prosecutions Department and Police (Richtlijn Openbaar Ministerie en Politie), which originally applied only to the victims of serious offences, including those of a sexual nature.

216. In 1987, these Guidelines were expanded to cover the victims of all indictable offences. Their primary concern is to ensure that victims are treated correctly, which includes restitution and the provision of victim support to those in distress. The Guidelines state that it is the duty of the police and the Public Prosecutions Department to take heed of the victim's desire for restitution and where possible arrange for the offender to pay restitution.

217. The third committee is the Committee on Legal Support for Victims in Criminal Proceedings (Commissie Wettelijke Voorzieningen Slachtoffers in het Strafproces). In 1988, it published a report recommending changes to criminal proceedings aimed at expanding the use of restitution. The Committee also argued strongly in favour of the rehabilitative value of restitution.

218. In April 1995, the recommendations of the Committee on Legal Support for Victims in Criminal Proceedings were taken as the basis for a new set of guidelines for police and public prosecutors and for new legislation aimed at making restitution a part of criminal proceedings.

219. The new legislation expands the scope for restitution in criminal proceedings, and the new guidelines place special emphasis on the responsibilities of police and public prosecutors with regard to restitution, urging both agencies to try to arrange restitution as soon as possible during criminal proceedings. One important change in these new guidelines is that they apply to victims of all crimes, not just indictable offences.

220. Criminal law. There are several possible procedures whereby victims can obtain restitution during criminal proceedings, either before or during a criminal trial.

221. In the pre-trial procedure, restitution is arranged with the help of the police or public prosecutor. The 1987 guidelines reserve this possibility for straightforward cases involving material damage. If the police or public prosecutor arranges for an offender to pay restitution, the public prosecutor may drop the charges. Alternatively, he may agree to an-out-of-court settlement. This is similar to a fine, but agreed with the Public Prosecutions Department rather than imposed by the court. Out-of-court settlements and decisions not to prosecute stop cases from coming to court, provided the offender complies with the public prosecutor's requirements.

222. In addition to the police and Public Prosecutions Department, other agencies such as victim support groups and the probation service may also arrange restitution prior to a trial. When doing so, they will always keep the police or public prosecutor informed of developments. The public prosecutor has the final say on whether to proceed with charges, and his decision will depend in part on the payment of restitution by the offender.

223. There are two possible procedures whereby victims can obtain restitution during the course of a criminal trial. The first is for the court to combine restitution with a suspended sentence, whereby the sentence's non-execution will depend on restitution being paid. Since restitution is part of the

sentence in such cases, the Public Prosecutions Department is responsible for its execution, and there is no upper limit to the amount of restitution that the court may impose.

224. The other procedure for obtaining restitution during a trial has its basis in civil law. The victim may join proceedings as a civil party. The court will then consider the victim's claim, and accept or dismiss it. If the court accepts the claim, it will make an order entitling the victim to restitution. However, since this is a civil law measure, it is up to the victim to secure payment. This "civil party model" has its limitations, one of which (under the old act) was that victims could claim no more than 1,500 guilders for indictable offences and 600 guilders for summary offences.

225. The new act, however, which entered into force on 1 April 1995, extends the possibilities for victims to obtain restitution during a criminal trial, and removes many of the limitations of the civil party model. It does not make any changes to the existing arrangements for obtaining restitution before a trial or linking restitution to suspended sentences. The new provisions are meant to make it easier for victims to obtain restitution during the course of a criminal trial.

226. The new act also makes the civil party model easier for victims. It drops the upper limits of 1,500 guilders for indictable offences and 600 guilders for summary offences. In their place, it introduces qualitative criteria. The case must be simple and clear-cut. "Simple" means that the victim may not bring witnesses or experts to the trial to support his claim, which means that only straightforward cases will be considered for restitution during the course of a criminal trial. The focus of the trial must be the criminal offence and not the civil claim.

227. Here again, victims wishing to claim compensation for non-material damage may find themselves unable to do so. However, the victim may split his claim into simple and complicated components. The simple claim may be dealt with during the criminal trial, and the complicated claim will have to go to a civil court. The victim no longer has to be present at the trial in order to make his claim. However, since it falls under civil law, the victim must secure payment himself (the Terwee Act, 1993).

228. In addition to changes to the civil party model, the new act introduces the restitution order, which provides for restitution on its own or in conjunction with another sanction. There are no upper limits to the amount of restitution awarded, and the Public Prosecutions Department is responsible for its execution. As in the case of fines, an offender's failure to pay restitution may result in a custodial sentence which allows the public prosecutor to put pressure on the offender to pay. If an offender serves the custodial sentence in lieu of payment, he will no longer be obliged to pay restitution to the victim.

229. There are many ways in which victims can obtain restitution during criminal proceedings. However, they are all limited to monetary compensation for material damage suffered as a result of an offence. Although the aim of restitution is to confront offenders with the consequences of their actions,

it is based on rather a narrow approach to the suffering of victims. Offenders are not confronted directly with their victims nor with the pain and psychological damage that their victims have suffered.

230. Civil law. Restitution in criminal law is easier, less time-consuming, and often less expensive than in civil law, where the victim has to be represented by a lawyer, must pay court fees, and runs the risk of having to pay the opposing party's costs.

231. However, civil law has certain advantages over criminal law. One of the most important is the variety of ways in which compensation can be applied for and awarded. Compensation may of course consist of an amount of money to be paid by the offender, but it may also include other obligations. The court may also place restraining orders on the offender, for instance forbidding him to contact the victim or enter the street where the victim lives. This gives the parties a wide range of instruments, allowing them to address the problem directly and seek solutions appropriate to individual situations.

232. The second advantage of civil law is the scope for action it affords to victims: they may take the initiative, and are not dependent on the public prosecutor as in criminal cases. In principle, civil law regards victims and offenders as equal parties in disputes.

233. The third advantage is that civil law sets no limits on the claims that victims may make. This is an important difference between civil and criminal law. However, while victims are not bound by maximum awards or other restrictions, there is no guarantee that the offender will comply with the court's decision, and it is up to the victim to secure compensation from the offender. Nevertheless, the flexibility of civil laws makes it an attractive option for some victims. Many women victims of rape or incest, for instance, seek compensation through the civil courts, demanding large awards for non-material damage and applying to the court to order the offender not to contact them or to enter their neighbourhood.

234. Safety net for compensation following violent offences. Victims who are unsuccessful in recovering compensation from the offender, insurance company, or elsewhere may apply to the Criminal Injuries Compensation Fund. In certain circumstances, the relatives of victims who have died as the result of a violent offence are also eligible for assistance from the Fund.

235. The Fund defines violent offences as those involving violence against the person. These obviously include assault, violent robbery, homicide, etc. They also include offences whereby persons are forced to perform certain acts against their will (such as rape and indecent assault) and deprivation of liberty. Victims of violent offences who suffer serious physical and/or mental injury may be eligible for up to f. 50,000 for material damage and f. 20,000 for non-material damage from the Compensation Fund. If serious injury (including mental injury) occurs, it is always assumed that non-material damage has taken place.

236. Victim Support Centres for practical and emotional problems. In 1984, the National Victim Support Association was established, with a network of 72 Victim Support Centres where victims of both summary and indictable

offences may apply for: information and advice in all sorts of practical areas; emotional support; help with completing forms and writing letters and petitions; accompaniment on visits to the police, the public prosecutor's office, lawyers, the court, or the doctor's surgery; mediation, for instance in seeking contact with the suspect/offender; information and advice on compensation and mediation in obtaining compensation; the involvement of or referrals to other caring agencies.

237. The Victim Support Centres cooperate with many other organizations such as the police, the Public Prosecutions Department, social work agencies, the Regional Institutes for Out-patient Mental Health Care (RIAGGs), and legal aid advice centres. There are also special caring agencies to help the victims of certain offences, such as sexual attacks, racial discrimination, and traffic offences.

238. Research and public information. In order to provide the victims of crime with the best possible support, it is important to assess existing provisions and practice. A great deal of research is being done to identify and rectify shortcomings.

239. For instance, several studies have been conducted to assess the impact of the new compensation provisions on both offenders and victims (the Terwee study; Mediation in payment of compensation by offenders, Final report on zero-effect measurement 1994, and the Terwee study; Study of the introduction of the Terwee Act and Guidelines, Follow-up study: assessment of implementation including 1994).

240. In June 1995, another study was completed on the consequences of being the victim of a crime, the need for assistance and guidance from the police, and referrals by the police to Victim Support.

241. Since it is so important to communicate the right information at the right time and place, the Dutch Government has earmarked 20 million guilders for the implementation of the new victim support provisions. This sum will be added to the budgets of the Ministries of the Interior and Justice in gradually increasing amounts until 1998. A project team set up specifically for this purpose is responsible for the effective implementation of the new provisions. Not only is a large amount of public information being disseminated in six languages (Dutch, German, French, English, Turkish and Arabic), but there has also proved to be a demand for information among agencies responsible for referring victims to other agencies.

G. Sources of fundamental rights

242. A number of sources of fundamental rights can be indicated in Dutch constitutional law. In the first place chapter 1 of the Constitution, entitled Fundamental Rights, contains 23 articles setting out civil, political, economic, social and cultural rights. Elsewhere in the Constitution one comes across occasional provisions which can be classified as fundamental rights. For example, there is article 114 which prohibits the imposition of the death penalty and article 99 which states that the

conditions under which exemption from military service is to be granted on account of serious conscientious objection are to be specified by Act of Parliament.

243. A second source of fundamental rights is to be found in primary and secondary EC law and in the case law of the European Court of Justice. By virtue of its supranational character EC law is automatically incorporated into the Dutch national system. Because of this, fundamental rights which have been codified or recognized at Community level are at the same time national rights.

244. The third source of fundamental rights is provided by various international treaties. The Netherlands adheres to a monistic system in respect of the relationship between international and national law. Under this system international law is incorporated unchanged and without national legislation into national law.

245. The most important treaties for the Netherlands in the sphere of human rights are: the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols, the European Social Charter, the International Covenant on Civil and Political Rights and its Optional Protocols, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and several ILO conventions.

246. Finally, it should be pointed out that under certain circumstances case law itself may prove to be a source of fundamental rights and general legal principles such as the principles of legal certainty and equality.

247. Where supranational or international law offers greater protection than national law, the former prevails over the latter. However, situations sometimes arise where national law offers more security, in which case national law takes precedence.

H. Review of legislation in the light of human rights

248. The Dutch legal system has an open structure. The interpretation of national legislation in the light of human rights conventions is required by the Constitution (see arts. 93 and 94). In other words, formal legislation should be applied in a manner which accords with the conventions. Acts of Parliament can thus be reviewed by the courts in the light of generally binding provisions in conventions.

249. The Dutch courts must decide whether a particular provision in an international convention is directly applicable. Statutory provisions remain inapplicable if they conflict with directly applicable treaty provisions. The Dutch courts have accepted the direct applicability of numerous provisions, including the fundamental rights enshrined in the European Convention on Human Rights and the International Covenant on Civil and Political Rights.

250. If a specific fundamental right is at issue and is enshrined both in the Constitution and a treaty, it is important to ascertain which offers the greater protection; article 60 of the European Convention on Human Rights and article 5 of the International Covenant on Civil and Political Rights stipulate that where domestic legislation and treaty provisions cover the same ground the most favourable provision must be applied.

251. If any doubt exists as to whether a statutory provision contravenes the Constitution, article 120 of the Constitution states that the legislature and not the courts have the power of decision in this area: "The constitutionality of Acts of Parliament and treaties shall not be reviewed by the courts". Article 120 must be seen as an exception to the unwritten general rule that the courts are empowered and also obliged to review the constitutionality of delegated legislation (orders-in-council, ministerial orders, and by-laws enacted by the provincial and municipal authorities, the water boards and bodies as referred to in article 134 of the Constitution). Such legislation may not conflict with any Act of Parliament; it is up to the courts to decide if this is the case.

I. States of emergency

252. In order to protect the internal or external security of the State, a state of emergency may be proclaimed by Royal Decree pursuant to article 103 of the Constitution. According to article 103, the cases in which such a state may be declared and what the consequences of such a declaration may be must be specified by Act of Parliament.

253. Directly following the declaration of a state of emergency the States General meet in joint session to decide how long it should last. Decision-making in joint session is considered an exceptionally serious measure since an "ordinary" Act of Parliament is passed by an ordinary majority in the Lower House and subsequently by an ordinary majority in the Upper House.

254. In a state of emergency extra powers are required. These are conferred in emergency legislation or emergency provisions in ordinary legislation. Article 103 of the Constitution permits such emergency legislation to depart from a limited number of provisions enshrining fundamental rights. These comprise the freedom of religion or conviction, freedom of expression, right of association, assembly and demonstration, the sanctity of the home and the privacy of correspondence, telephone and telegraph. Only very limited use has been made of the scope for restricting certain rights. Of the numerous emergency laws and provisions only the Civil Authorities (Special Powers) Act, the War Act and the Media Act contain provisions limiting fundamental rights. Furthermore, the provisions in question may only enter into force under the most exceptional circumstances, i.e. a general state of emergency.

J. International treaty provisions and article 103 of the Constitution

255. Article 6 of the Constitution is the first article concerning fundamental rights in the list contained in article 103, paragraph 2. Article 6 regulates the freedom of religion and belief. During states of emergency this right may

be suspended only where it is exercised outside buildings and enclosed spaces. It is also protected under article 18 of the International Covenant on Civil and Political Rights, paragraph 3 of which reads: "Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals or the fundamental rights and freedoms of others".

256. Article 7 of the Constitution, the second referred to in article 103, regulates freedom of expression, which is also protected by the International Covenant. Article 19, paragraph 2, recognizes freedom of expression and paragraph 3 limits it as follows:

> "The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
>
> "(a) For the respect of the rights or reputations of others;
>
> "(b) For the protection of national security or of public order (ordre publique), or of public health or morals."

257. The right of association is regulated in article 8 of the Constitution, recognized in article 22 of the International Covenant and limited in article 22, paragraph 2, of the latter:

> "No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre publique), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right."

258. Article 9 of the Constitution enshrines the right to freedom of assembly and demonstration. The restrictions formulated in article 21 of the International Covenant on Civil and Political Rights are identical to those contained in article 22, paragraph 2, and quoted above, except that the last sentence referring to restrictions on the members of the armed forces and police is not included.

259. Article 12, paragraph 2, of the Constitution sets out rules which must be taken into consideration when a person's home is entered against his will. This right is also protected in a number of international treaties. Article 17 of the International Covenant on Civil and Political Rights reads as follows:

> "1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.

"2. Everyone has the right to the protection of the law against such interference or attacks."

260. Article 13 of the Constitution concerns the privacy of correspondence, the telephone and telegraph. The relevant article of the International Covenant on Civil and Political Rights is quoted above in connection with the sanctity of the home.

261. The final provision in the list contained in article 103, paragraph 2, of articles of the Constitution which may be departed from is article 113, paragraphs 1 and 3. Paragraph 1 of this article states that the judgement of offences shall be the responsibility of the judiciary. Paragraph 3 stipulates that a sentence entailing deprivation of liberty may be imposed only by the judiciary.

262. Article 113, paragraph 1, corresponds to article 14, paragraph 1, of the International Covenant on Civil and Political Rights, which may be departed from under article 4 of the Covenant which states:

"1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.

"2. No derogation from articles 6, 7, 8 (paras. 1 and 2), 11, 15, 16 and 18 may be made under this provision.

"3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation."

263. Article 113, paragraph 3, of the Constitution corresponds to article 14, paragraph 1, of the International Covenant on Civil and Political Rights. This article may also be departed from in exceptional circumstances under article 4 of the Covenant.

K. Fundamental rights and emergency legislation

264. There are very few provisions in emergency legislation (excluding the Civil Authorities (Special Powers) Act and the War Act) which permit infringements of fundamental rights. Where fundamental rights are infringed, or rather, departed from, during states of emergency the rights in question are, as it were, suspended. In such cases no account need be taken of the

restrictive clauses attaching to certain fundamental rights as enshrined in legislation. Such "normal" restrictions are of course applicable at all times.

265. The only example of legislation which infringes a fundamental right is section 174 of the Media Act, which reads:

> "The Prime Minister may, after consultation with the Minister, lay down regulations with regard to the content of radio and television programmes and supervision of that content during a period of national emergency. Those regulations may depart from the provisions of Section 134."

266. Pursuant to section 174 of the Media Act, the fundamental right laid down in article 7, paragraph 2, of the Constitution, which prohibits prior supervision of the content of radio or television broadcasts, may be infringed.

267. It should be pointed out that a consequence of article 103, paragraph 2, of the Constitution is that should emergency legislation which is not listed in article 103 infringe a fundamental right which may be restricted under international treaty provisions in a state of emergency, such an infringement would not be lawful in the Netherlands. The legislature has stipulated that in states of emergency only the fundamental rights listed in article 103 may be restricted.

268. A final remark may be made here regarding the relationship between article 103 of the Constitution and the international treaty provisions referred to. On the basis of article 103, paragraph 2, restrictions may be placed on a limited number of fundamental rights only in states of emergency within the meaning of that article. The explanatory memorandum accompanying Bill No. 15 681 amending the Constitution justifies this as follows: "We are of the opinion that in cases where infringements of fundamental rights in states of emergency may be of a radical nature, the Constitution should not push the limits of such infringements any further than is strictly necessary. We would refer in this context to article 15 of the European Convention on Human Rights which prohibits derogations from certain articles of the Convention. The existing Constitution goes further; infringements are unlawful except in the case of certain rights. The Bill adheres to this system".

269. In other respects too, article 103 of the Constitution is in line with treaty provisions on exceptional circumstances. The first paragraph states that a state of emergency may be proclaimed "in order to maintain the internal and external security of the State". The third paragraph stipulates that the States General shall meet immediately in joint session to decide on the duration of the state of emergency. The article gives no detailed definition of the circumstances which might lead to the proclamation of a state of emergency, this in view of the numerous possible situations which might give rise to an emergency and their unpredictable nature.

270. The way paragraph 1 of article 103 is formulated, together with the very serious nature of the procedure prescribed in paragraph 3, means that a state

of emergency can be declared only in the event of an extremely serious threat to national interests. This too ensures that there is no discrepancy with the treaty provisions referred to.

271. The Dutch system provides for two types of states of emergency (see para. 252), both of which come under the scope of article 103. An advantage of this system is its flexibility and the fact that no far-reaching powers need be invoked when the situation requires less radical measures. This means that when the nature of the circumstances - which may in themselves be extremely serious - allow, the less radical form of emergency should be opted for, so that fundamental rights need not be restricted. It will be clear from the above that the term "limited state of emergency" thus refers to the measures required and not to the seriousness of the circumstances.

272. That part of emergency legislation which is eligible for separate application does not depart from the Constitution or from international law. In so far as it restricts fundamental rights, this takes place in accordance with and pursuant to the normal restrictive clauses attached to those rights in the Constitution and in international treaties, and not on the basis of the general power of derogation in times of public emergency laid down in article 4 of the International Covenant on Civil and Political Rights.

L. Responsibility for supervising the observance of human rights

273. In addition to the responsibility of Government and judiciary to supervise observance of human rights, there are numerous organizations whose aim is to follow with an extremely critical eye government action in the area of human rights and in particular sub-areas. Many of these receive government grants to enable them to carry out their mandate in a satisfactory manner. They nevertheless operate entirely independent of Government and do not hesitate to criticize where necessary. Many organizations representing the interests of various groups or individuals in Dutch society are consulted by Government when it is preparing or amending policy and legislation. They provide advice both on request and at their own initiative. Examples of such organizations include the National Bureau against Racism, the Organization against Trafficking in Women, organizations representing migrants, the Victim Support Centres, the Human Rights Study and Information Centre (SIM), Amnesty International, the Dutch section of the International Commission of Jurists and trade unions.

274. In addition, the Government often calls on the expertise of academics and representatives of human rights organizations in order to establish a constructive dialogue with the aim of improving and extending the observance of human rights:

IV. INFORMATION AND PUBLICITY

275. International treaties and the decisions of international organizations are published in the Netherlands pursuant to the Act of 22 June 1961 (Bulletin of Acts and Decrees 207). The following articles of the Act are relevant here:

Article 1

The publication of agreements with other Powers and with international organizations and of the decisions of international organizations shall be effected by the Minister for Foreign Affairs in the Treaty Series of the Kingdom of the Netherlands.

Article 3

Where necessary and possible the following shall also be published in the Treaty Series:

(a) A Dutch translation of the agreement or decision;

(b) Information regarding approval by the States General;

(c) Information regarding the date on which the agreement or decision enters into force in other States and for international organizations;

(d) Information regarding the date on which the agreement or decision expires in other States and for international organizations;

(e) Other information.

Article 4

1. The Minister for Foreign Affairs shall continue to be responsible for the publication of the Treaty Series.

276. The Ministry of Foreign Affairs has published a booklet entitled Human Rights Instruments to meet the need for a compact and accessible reference work on the subject. It contains global and regional documents dealing with human rights and is available free of charge from the Human Rights Coordination Section (DGIS/CM) at the Ministry.

277. In the second half of 1991 the Netherlands proposed that the EU should issue a common handbook on human rights. Known as the Human Rights Reference Handbook, it contains human rights conventions and details of supervision and implementation mechanisms. It further addresses a number of specific human rights issues and looks at the roles of the various actors within the organizations under review.

278. With regard to human rights legislation and with particular reference to Dutch human rights policy, it should be noted that the Dutch delegation to the United Nations Commission on Human Rights drafts an annual report of the activities of the Commission which is sent to members of Parliament, NGOs, national institutions and universities.

279. A report is also issued of the human rights aspects of the work of the United Nations General Assembly. This is done on an annual basis by the International Organizations Department of the Ministry of Foreign Affairs. The report is available to interested parties.

280. As a follow-up to the 1990 World Summit for Children the Netherlands Government funds an annual publication entitled Kids, written for and by children and distributed in primary and secondary schools. The articles in the magazine are on subjects that directly affect children.

281. The Advisory Committee on Human Rights and Foreign Policy, which is connected to the Ministry of Foreign Affairs, also plays a role in publicising human rights issues. Its reports are available free of charge. The Ministry of Foreign Affairs also makes English translations of the reports available.

282. The most effective way of reaching the target groups concerned is often a direct approach in the area of greatest relevance to them. In practical terms this means that the Dutch Government endeavours to inform the members of the public personally of their rights and opportunities in specific circumstances. People suspected of committing offences or in detention are thus given a leaflet written in ordinary language setting out their rights. Victims of violent crime, people needing legal representation but unable to pay for it, or people who believe they have been the victim of discrimination (on any grounds whatever) can ask for specific information. The Government makes every effort to provide that information in a way that makes it easily accessible. People about to begin a custodial sentence, for example, are given a leaflet detailing their rights and obligations at the same time as they are ordered to report to a custodial institution. Translations in languages including Arabic, English, French, German, Spanish and Turkish are available to people who do not speak Dutch. A number of these publications may be seen at the United Nations Centre for Human Rights, Geneva.

283. The Ministry of Foreign Affairs is responsible for coordinating the preparation of the Dutch periodic reports to the United Nations human rights treaty bodies. The content of the reports is provided by all the ministries involved with a specific issue. At each ministry a particular person/ department is responsible for reporting to the treaty bodies.

284. It is the view of the Dutch Government (and agreed with NGOs) that the duty of reporting devolves upon the Kingdom. NGOs cannot be part of the reporting team: their responsibilities lie elsewhere. In view of this, the Dutch Government has given the NGOs ample opportunity to produce "shadow" reports. The Dutch section of the International Commission of Jurists in particular has taken advantage of this.

285. The States General are kept up-to-date on reporting to the treaty bodies.